

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 37

CURTIS PUBLISHING COMPANY, PETITIONER,

vs.

WALLACE BUTTS.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

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JOHN GREGORY, called as a witness on behalf of the Plaintiff, after having first been duly sworn, testified as follows:

Direct examination.

By Mr. Schroder:

Q. State your full name?

A. John Gregory.

Q. Where do you live, Mr. Gregory?

A. 420 Woodward Way, Athens, Georgia.

Q. What is your occupation, Mr. Gregory?

A. I am the defensive football coach at the University of Georgia.

Q. How long have you been coaching at the University of Georgia?

A. Since 1957.

Q. How long have you been in the coaching profession?

A. Since 1949.

Q. Are you familiar with the University of Georgia films that were taken of the Alabama-Georgia game in 1962?
[fol. 606]. A. Yes, sir.

Q. Could you show that to us, please, and relate what the screen shows?

A. Yes, sir.

.

Mr. Schroder: Mr. Gregory, would you relate what is being shown there, please?

The Witness: Yes. This is the team coming on the field, the University of Georgia team in the white uniforms. Alabama, of course, is the dark.

This is the Georgia team, the players on the sideline before the kick-off. The captain is out in the middle of the field.

This is Georgia kicking off and Alabama receiving.

The Georgia team in this game covered kick-offs and covered punts real well.

Now, this is the Alabama team, and that is what we refer to as a pro formation at Georgia. This is pro right with Alabama's end. Our defensive end, the right end is off in what we refer to as the triangle, and he is supposed to cover the flat. That is a simple quarterback sneak by Alabama.

This is pro left with Williamson, the split right end. This was a badly executed play on the part of Alabama. I think it was going to be what we refer to as the outside belly, but it was—it was not well executed.

Again, this is a pro formation used by Alabama which is a slot with a split end.

[fol. 607] On this particular defense our end is back in a position where he can rush a passer. If you will notice our defensive linebacker, the right defensive linebacker is loosening up and he is to cover to the flat. He is keying that back of Alabama's and covering him when he swings out there.

Now, on this particular pass, Williamson, which is the split end, went down the field and broke to his left, and Namath, who is the quarterback, he overthrew him and the ball was wild.

Alabama is now in the punt formation, what we call spread punt at the University of Georgia.

In this particular game Alabama had a real good kicking game and Georgia usually got the ball deep in their territory.

This is a slot formation. We refer to it at Georgia a slot left. That is, a lot of teams refer to it as a tight slot. It looks—that slot looks like it might be a yard and a half. When that back goes in motion like that, that is what we call in our terminology as a fly.

This particular play is—is our outside belly series which is 029 at Georgia, and Rakestraw was the quarterback, and he kept the ball.

Now, this is slot right, we are going to run a trap play. Our left guard was supposed to trap, but Alabama, as you can see, Alabama had a defensive man that went around our center and made the play. Our center failed to block the man on his nose, and the defensive man made the play, made the stop right there.

This is slot right. Here is the play; here is the interception that was referred to in the magazine article that said that Rakestraw was rushed badly and the Georgia players were like a bunch of rats in a maze. Rakestraw was [fol. 608] not rushed at all. He should have run for a first down—

The Court: I don't think that is proper.

Mr. Schroder: No, sir.

The Court: No, sir.

The Marshal: Let's have order, please.

The Court: If we can't have order, we will clear the courtroom. Mr. Schroder, if he makes another remark like that, I will have to discontinue this testimony or something. I don't think that was proper.

Mr. Schroder: Just call the plays.

The Court: Yes, sir; whatever his feelings were, I don't think he should show them.

The Witness: This is Rakestraw on what we call a roll-out type pass at Georgia. He was trying to throw to our left end coming across here.

After the interception Alabama lines up in a pro, and Williamson is the split end, and he puts just a little fake [fol. 609] on Porterfield, who is the defensive left halfback, and beats him for a touchdown.

Mr. Schroder: That's all right; let it go; let it go.

The Witness: Alabama was attempting an extra point.

Georgia is in a slot right formation, and that is what we call at Georgia a power-pop play.

Slot right; Rakestraw is rolling out to his right, throwing to Babb, and Babb catches the ball and falls out of bounds.

This is slot right fly, and Rakestraw rolls out again. This looked like a kind of trap that was run real fast, the film was, and it looked like a countertrap by Georgia.

This is the pro left formation used by Georgia. This back is going in long motion, and Alabama did not adjust its defense to this particular play. This is the first time that we have used this formation in the game, and they do not put anyone out to cover this back that is going over in long motion. We complete the pass to him, and he makes a good run, but we get a fifty-yard penalty and the play is called back.

That is Georgia in spread punt formation. We tried to run off of the spread punt.

Georgia now is again in spread punt formation.

This is Alabama in a pro formation again, pro left. It was pop play, in our terminology, that Alabama ran.

On this particular play we didn't have anyone covering the flat, and the flat was wide open, and they threw the ball out there.

[fol. 610] This is a pro formation, a hook pass thrown by Alabama, a pop play.

Alabama completed a pass in the flat off of a roll-out type pass.

That was—in our terminology at Georgia that is what we call a Utah pass. This is a roll back type pass by Alabama.

This is a slot right by Georgia. I don't know what the play was going to be. It was a bad exchange between the center and the quarterback. I don't know what the play could have been.

Again this is a slot right. It is a trap play. This is a slot right formation with the back on the fly, and we run the outside belly, 048.

Georgia was in spread punt formation, and it was a bad snap over the kicker's head, resulted in a safety.

That was a pro formation and a sweep run by Alabama.

This is a pro formation again, and Alabama runs the outside belly. The quarterback kept the ball.

Alabama is in a slot formation, a slot left. They run the fullback off tackle.

Lights.

The Court: Mr. Schroder, do you have any particular play or any particular point, or just show the whole thing?

Mr. Schroder: Show the whole game.

The Court: All right.

[fol. 611] Mr. Schroder: I'd rather not ask the witness to comment on a play, just say what is going on and that is it.

The Witness: I didn't understand what you wanted.

Mr. Schroder: I understand; it is my fault.

The Witness: I didn't understand what the procedure was. Mr. Schroder, do you want every play called?

Mr. Schroder: Not necessarily.

The Marshal: Let's have order, please.

The Witness: Lights.

This is a pro right formation by Alabama and a roll back type pass, what we call the Utah pass at Georgia, a little pass he flipped to the halfback coming through the line.

A pro right formation with left end split real wide; man on fly; looks like what we would call at Georgia the 048 or the outside belly by the quarterback.

This is a pro left formation, a trap play by Alabama.

This is a slot formation, slot left. It is a quick hand-off to the right halfback, straight into the line.

This is a slot right formation by Alabama, a hand-off to the fullback in the middle.

[fol. 612] This is a pro left, a sweep which at Georgia would be 88.

This is a pro left. Namath rolls to the right, throws to the right halfback in the flat.

Mr. Schroder: Is that a touchdown?

The Witness: Yeah. That was Alabama's second touchdown.

This is a pro right, Rakestraw rolls and throws to Babb on a down and out, which was incomplete.

A slot right, fly; we run a counter trap play.

This is a slot right. We run a sweep.

This is a pro right by Alabama and a quarterback sneak.

This is a pro right formation. This is 30-2 pop in Georgia's terminology that Alabama just ran.

This is pro left, a sweep.

This looks like a lot, a give-off to the fullback.

Pro right, trap play to the fullback.

Pro left, fly, the outside belly series which at Georgia would be 029.

Pro left, pop play to the fullback.

This is slot right, fly; fullback runs off tackle, which would be 036 slant at Georgia.

This is pro left, a roll-out to the left by quarterback.

He throws to the right quarterback out in the flat and drops the ball and it is incomplete.

That is a slot left and quarterbacks sneak.

Slot left, fly, fullback runs off tackle; it would be the 037 slant.

Slot right, fly; Rakestraw rolls and throws complete to Babb on the left.

[fol. 613] Mr. Schroder: That was pro right?

The Witness: This is pro right formation. Babb, a split left end.

This is pro left, motion, tries to throw to Babb.

This is the pro left, the back coming in motion. Rakestraw rolls, tries to throw to him, complete out in the flat.

A slot left.

This was 19 pass, left end bent in. Pass was completed to John McClell.

The slot left, it was a 19 special pass, and Rakestraw tried to keep the ball.

Slot right, a 19 pass, left end hook. The left end was going out and trying to do a hook in there, and it incomplete.

Slot left, fly; this was a type of a bootleg.

This is slot left, fly, the outside belly series with the quarterback keeping the ball; it would be 029 keep at Georgia.

This is pro left, trap, just a quick fullback trap with the right guard trapping. I can't see this complete formation. I see a man split way out here. It looks like pro right. It is pro right, quarterback sneak.

Lights.

The Court: Turn on the lights.

Members of the Jury, I will admonish you—I think I have previously given you those instructions. We will recess until 3:20. Let the Jury pass out; everyone else remain seated.

(Whereupon the Jury retired from the courtroom at 3:05 p.m.)

[fol. 614] The Court: Recess until 3:20.

(Whereupon Court recess at 3:05 p.m., reconvening at 3:20 p.m.)

After Recess

The Court: All right, sir.

The Witness: Lights.

This is the beginning of the third quarter.

That is Alabama kicking off to Georgia.

Georgia is in a pro right with a motion. This is a pop play, 30-2 pop.

Georgia is in a slot right, fly; Rakestraw rolls to the right and tries to hit Babb, and he misses.

Slot right, motion; Rakestraw rolling to the right, tries to throw to the right halfback in the flat; it is incomplete.

This is a slot right, a sweep.

A pro left; it is a trap, quick trap to the fullback.

Pro left, what we refer to as a roll-back pass; throws to the end coming across and it is complete.

Pro left. roll right; he hit the end on a hook and it is complete.

Alabama quarterback rolls to the right, throws to the right halfback in the flat, and he scores a touchdown. The third Alabama touchdown.

Alabama tries to go for two points and throws in the end zone, and it is incomplete.

[fol. 615] Georgia is in a pro right, fly, 32 pop.

We make a pretty good gain, but we get a fifteen-yard penalty on the play.

Pro left, fly, a counter trap.

Pro left, fly, an option play, quarterback keeping the ball.

Pro left, fly, 33 pop.

Pro right, sweep right, 99 at Georgia.

Pro right, fly, 048 keep, the outside belly series with the quarterback keeping the ball.

Pro right, sweep right, 99.

Pro left, quick trap to the fullback.

Pro right, 21 trap, left halfback on a quick trap.

Slot right, sweep right.

Pro left, quarterback rolls to his left, decides to run with the ball.

Pro right motion, 33 pop.

Pro left, quarterback rolls right, throws to the right end on a deep circle hook, and it is complete on about the seven-yard line.

Tried the outside belly series again; it was a bad pitch, and they fumbled the ball and Georgia recovered.

Pro left; we run the sweep left, which is—which at Georgia is 88.

Pro left fly, 19 overpass, throws to the right end, goes out of bounds.

Pro left, 30-2 pop.

Pro right, motion, Rakestraw rolling with the ball and tries to throw to the motion man and the pass is incomplete.

Pro right, fly, tries to throw to right end—left end, tries to throw to the left end, incomplete.

This is pro right, fly, 32 pop.

Pro right, fly, 029, and he pitches.

[fol. 616] A slot left, just a quick hand-off to the right halfback.

Lights.

Lights.

This is pro right, trap play to the left halfback.

Pro left, quarterback rolls back, throws to the right halfback in the flat.

Pro left, 33 pop.

Slot left, fly, a quick hand-off to the right halfback.

Pro left, fly, 33 pop.

A slot left, sweep left, which at Georgia would be 88.

Pro left, fly, 029 keep. The quarterback the fullback and keeps the ball, goes right down close to the goal-line.

Slot right, sweep right, and he scored standing up for Alabama's fourth touchdown.

Slot right, completes it.

This is slot right, 99, it is a sweep.

Pro right, motion, F-29 screen; away from the man in motion. We screened to the left halfback off of a drop back action by the quarterback, away from the man in motion.

Pro right, 99.

I'd like to point out here that we are running a sweep on this next play, the slot right 99, and our right guard swings behind the tackle and leads up through the hole.

This is pro right, sweep right, or 99, and again the right guard swings behind the tackle, blocks on the linebacker.

Pro right, straight ahead blocking, sweep right, 99.

Pro left, trying to throw a screen pass, would have been F-48 screen, trying to screen to the right halfback crossing, faking a block, going up sitting in the flat, catching [fol. 617] a screen pass. The quarterback does not throw the ball, and he is thrown for a big loss.

This is a pro left fly, quarterback rolls to his right, throws to the right end, which goes down and breaks to his right. The pass is incomplete.

This is pro right, quarterback sneaks.

Pro right; it is kind of a bad exchange between the quarterback and the fullback. The play is 32 pop.

Slot left, fly, gives to the fullback, what would be 37 slant, 037 slant at Georgia.

Pro left, fly, quarterback keeps the ball on the outside belly series which would be 029 keep.

Pro right; this would be 31 trap in our terminology.

Slot right—I'm sorry; I couldn't see this man out here. This is pro right. They have got a man out left here who is not in the picture. He comes in at the last.

This is a pro right formation, a sweep right, which would be 99 in Georgia's terminology.

Pro left, a trap to the right halfback.

Pro right fly. This is the outside belly series, again, where he fakes to the fullback; quarterback keeps the ball, pitching out to the halfback coming around, and he scores for the fifth Alabama touchdown.

This is a pro right formation, quarterback rolls back, going to try to throw, but he kept the ball and didn't make it. It was a two points—extra point try.

Pro left, fly, and the play is 33 pop.

Pro right, sweep right, 99.

This is a pro right, fly, Rakestraw tries to throw but he is rushed real bad by this number 70 here.

Slot right, Rakestraw rolls to his left, tries to throw back to right end or what we call a bend in pattern at Georgia and the pass is broken up, incomplete.

Slot right, fly, going to be a screen pass to the left this [fol. 618] would be F-29 screeno, away from the motion man.

Slot right, Rakestraw rolls to his left, tries to throw back to the right end, Babb, and the pass is broken up, incomplete.

Lights.

Mr. Schroder: Is that the end of the game?

The Witness: End of the game.

The Court: All right, Mr. Schroder. Put the podium back up there, Mr. Marshal.

Mr. Schroder: I will get it.

The Marshal: I will get it.

By Mr. Schroder:

Q. Mr. Gregory, I believe you testified you are the head defensive coach at University of Georgia?

A. Yes, sir.

Q. What is your function or what is your job as such?

A. During the game it is my responsibility to call every defense from the sidelines.

Q. You mean every defensive formation that Georgia is going into on any play?

A. Yes, sir.

Q. How is that called?

[fol. 619] A. I do it with a set of hand signals which relays the message to the defensive quarterback, who then calls it to the team.

Q. Could you give us an illustration?

A. Yes, sir. For example, if I fold my arms like this, that defensive quarterback, who is one of our guards, knows that that is 60 outside. He steps to the defensive huddle and gives the call. "60 Inside."

Q. How many different defenses do you have?

A. For the Alabama game—

The Court: You may sit down, sir.

A. (By the witness) For the Alabama game we had about—from eight or ten; I couldn't specifically say. We have a general defensive plan, as most schools do, and for certain games we pick out specific defenses that we want to use in that particular game. I can't say the exact number of defenses that we had prepared for the Alabama game, but I do have a written record of every defense that was used by the Georgia team in the game, because I have a manager that stands right beside me on the sideline, and as quickly as I give the defensive call he writes down the defense that was called, the down, the distance, the hash mark, and any comments that I have to make regarding the situation on the field.

Q. What is there that goes into the thinking of a defensive coach, such as yours, when he is deciding what particular defenses to have his team go into?

A. I am on the sideline. A team has twenty-five seconds in the huddle. During that time I have to make the decision, the score in the game, the down and distance, the position on the field, such as the hash mark, whether it is [fol. 620] on the right hash mark or the left hash mark, the middle of the field, whether I think they are going to throw the ball, their history has been; I have to study every team we play. Certain teams have a history of doing certain things at a certain spot on the field. I have to know all of this, and I have just a few seconds to determine in my own mind what I am going to call, and then I make that call, and it is given to the Georgia team.

Q. Is that commonly done by all schools, all colleges?

A. It is done by a lot of colleges; I can't say all of them; I don't know. I do know it is done by a lots.

Q. Coach Gregory, you referred during the running of the film here on several occasions to Georgia and Alabama, whoever might have had the ball at the particular time, running, I believe you said, 30-2 pop on one occasion; would it be 43 pop on another occasion?

A. We don't have a 43 pop; we have a 33 pop.

Q. 33 pop?

A. We have a 33 pop and a 32 pop.

Q. What is meant by the designation "pop"? Does that mean that something is particularly done on that play that is not done on another play?

A. Yes, sir.

Q. What is that, please?

A. That "pop" means that the halfback is going to lead through the hole and block the linebacker and that the linemen are going to turn out block, like that, in other words the linemen on either side of the hole, they will turn out and block out and block in on one side and out on the other, and the halfback is going to lead straight through the hole and block the linebacker, and the ball is given to the fullback, and he follows him through the hole.

[fol. 621] Q. All right, sir. Now, we use these numerals 32 and 33, 99, 88; what do the numerals indicate when you

are describing a play, for example, that the University of Georgia has?

A. Well, for example, on 33 pop, the 3 means, in our numbering system, 3 is the fullback and the other 3, when we say 33, it means the number 3 back, the fullback is going to carry the ball in the 3 hole. We number the holes, odds to the right, 1, 3, 5, 7, and 9; evens to the left, 0, 2, 4, 6, and 8. We number the backs, 1 for the quarterback, the left halfback is 2, the fullback is 3, and the right halfback is 4.

Q. So, the first numeral in your two-numeral sets there, the first numeral indicates the ball carrier who is going to carry the ball?

A. Yes, sir.

Q. If it would be the left halfback, it would be 2; if it would be the right halfback it would be 3—I mean, 4?

A. 4; yes, sir.

Q. The second numeral indicates which hole in the line he is going through?

A. That's right.

Q. If he is going wide, it is—you say odds were to the right; that would be 9?

A. 9; yes, sir.

Q. If he was going wide on the left, that would be 8?

A. Yes, sir.

Q. The Saturday Evening Post refers in its article to an Alabama player or Alabama players—no; strike that. It refers in its article to the fact that one of the Georgia players complained that Alabama players were saying “you can't run ‘a 8-pop’ on us.” Does Georgia have an 88 pop?

[fol. 622] A. No, sir.

Q. Is it possible to run what—is it possible to run a pop off of a sweep?

A. No, sir.

Q. And a 88 would be a sweep?

A. Yes, sir.

Mr. Schroder: Just a moment, please, Your Honor.

The Court: All right, sir.

By Mr. Schroder:

Q. Running through these notes right quickly—

Mr. Schroder: Could you hand them to the witness, please, ma'am?

The Clerk: Yes, sir.

By Mr. Schroder:

Q. I assume you have seen before a reproduction of the notes which you now hold in your hand?

A. Yes, sir.

Q. Will you run over those briefly, without me necessarily questioning you about each, but just go through them briefly and tell us what each means to you insofar as it is related to the University of Georgia's football team?

A. Well, naturally "Bear" Bryant and Wally Butts on occasions, I have heard Coach Butts talk to Coach Bryant [fol. 623] on the telephone, and I have also been around Coach Butts and Coach Bryant in coaches' conventions and meetings of the Southeastern Conference, and things like that. I have never heard Coach Butts refer to Coach Bryant as "Bear". He has always called him "Paul". I have heard Coach Butts—I have been in his office when he has talked to Coach Bryant on the phone, and he'd say, "Paul, this is Wallace Butts." I have never heard Coach Butts refer to him as "Bear".

"Rissmiller, greatest in history". Rissmiller was a sophomore tackle who had good potential; he is a good athlete. It was his first college football game that he had ever played in as a varsity man against the University of Alabama.

Q. All right, sir.

A. He did a credible job in the game.

"Rakestraw to right" doesn't mean anything to me; I mean, any—any team has a quarterback that goes to the right or goes to the left; doesn't mean anything.

"Optional left pass if can block man on corner, keeps running." The optional left pass is a pass that has been

used at Georgia previously and was last used against the University of Miami in 1961. This optional left pass, when we last used it, we used it off of a drop back action where the quarterback drops straight back, and he would not attempt to run on the corner. So, these notes here are wrong, if anything was used pertaining to these notes, it would be wrong, because—

Q. You mean if it regarded the University of Georgia?

A. If it regarded the University of Georgia; that's right. Now, also on an optional left pass, an opposing coach [fol. 624] would have to know the exact terminology of the opponent's team, or else he would not know what any one was referring to. I do not know as a coach, the exact terminology of other teams that we play.

Q. All right, sir.

A. "Well disciplined ball club." For a football team to win in the Southeastern Conference, it has to be well disciplined. To me discipline means they don't jump off sides; they don't fumble the ball; they don't get penalties that is unnecessary. It just means that they do things to perfection, and I would have to say that the Georgia team, in my estimation, was not a well disciplined football team. We made too many mistakes that hurt us real bad.

Q. Nothing unusual about a bunch of sophomores making mistakes, is it?

A. No, sir; they do it in every league.

Q. That's right.

A. And when you have to play them, they are going to make them.

"Added two coaches." We had lost some coaches at Georgia, and I reckon this is—I don't know what this is referring to; it could be referring to Alabama. I know they had added some coaches. We had added some coaches at Georgia. We added a boy named Frank Inman who came there last year from down at Richmond Academy in Augusta, and he wasn't there for spring practice. And then we added in the spring a coach that had come from the University of Nebraska, a Leroy Pierce.

Q. All right, sir.

A. "Onside-guard pulls on sweep." It was not in the game plan against the University of Alabama to pull guards on sweeps. Since Johnny Griffith has been head coach at Georgia we have never pulled the onside guard [fol. 625] on a sweep. At the times, if the defense dictates such, we will swing the guard behind the tackle, and they will exchange blocks. In our terminology at Georgia, "swing" mean that the tackle and the guard are going to cross-block. They are going to switch assignments. A "pull" means that a guard is going to cross-block. They are going to switch assignments. "Pull" means that a guard is going to pull around the end and lead interference.

Q. All right, sir; next one.

A. "Don't overshift," The basic defense at Georgia last year was an overshift. We used an overshift practically the entire game against Alabama, because that was the basic defense from which all of last year was an overshift. We used an overshifted on us in the ball game quite a bit, especially when the ball is on a hash mark, and the wide side of the field is there, you want to overshift to the wide side to get your men over there in a position to protect that wide side of the field.

Q. All right, sir. The next one. ✓

A. "Woodward commits fast-safety man." Woodward has had a history at Georgia, while he was a young sophomore, of coming up fast. That means that—by meaning committing fast, I am sure that that would be meaning that he comes up fast to the line of scrimmage on a running play and makes the tackle. If I were an opposing coach trying to use any information of those notes, and I knew that Woodward committed fast, all I would do would just fake a running play, make Woodward come up, and I would put the end down behind him, and I would throw over him for a touchdown. Alabama did not throw the ball in the vicinity or in the area in which Woodward's defensive [fol. 626] responsibility was in the ball game. They didn't throw a single pass in his defensive zone.

Q. All right, sir; next one.

A. "Weak defense, anybody except Blackburn." Weak defense, I thought the defense, to be honest, was a little better than the offense. The defense, in the year before, in the standings in the Southeastern Conference had finished sixth and the offense had finished eleventh, which is just one from the bottom. Now, "anybody except Blackburn", Blackburn was sick. He didn't practice much. He was—he had something wrong with his stomach, and he couldn't practice, and he was out of shape, and Blackburn did not play in the game except very little, right—I think right maybe at the end of the ball game he did play a little.

Q. Speaking of defense there for a moment, looking at the film a while ago that we saw, it appeared to me that Georgia covered those punts as well as any team that you could expect to cover any punt anytime?

A. Yes, sir; they hustled. They covered kick-offs well; they covered punts well.

Q. And looked like to me they were still hustling at the end of the game?

A. Yes, sir; they were still hustling.

Q. Next one.

A. "Bear slot right". That is just a standard formation, slot right. I reckon it is just—it says "Baer"; I guess they are referring to "Babb", I reckon that means it is a regular slot formation; it is just standard; most teams in football use it.

"Split right end out". I don't—that doesn't mean anything. I mean, the end splits—practically every team that plays football splits an end.

[fol. 627] Q. Would that be indicative of the lonesome end formation?

A. Could be; I mean a lot of teams, what we refer to in our terminology at Georgia as a lonesome end formation is an unbalanced line where we take an end and put him over on the strong side of the unbalanced line. That is what we call a lonesome end. I don't—"split right end out". I mean, you see both teams use split ends in that game.

Q. All right, sir.

A. "Long count, left half in motion." Every team in football has got different counts that they go on. Some of them go on quick counts; some of them go, for example, on one, or two, or three or four, just according to the play and what particular type of play they are going to run and what kind of snap count they want to use.

"Left half in motion." Everyone that could see the film, both teams were using motion men, I mean, backs going in motion one way or the other. I mean, that don't mean anything there as far as I am concerned.

"Best since Trippi, Porterfield." Well, I just say this, I never did have the opportunity to see Charlie Trippi play football. I know his reputation as being a great football player and an All-American football player. We have had a lot of good backs at Georgia since I have coached there that are much better than Porterfield. For example, we had Fred Brown in 1959. We won the Conference Championship. We had Bobby Walden who was a good back. We had Jimmy Orr who was a great back now playing with the Colts. We have had some good backs since I have been there.

Q. All right, sir.

[fol. 628] A. And I think they all were better than Porterfield. I mean, Porterfield is doing fine. He was a sophomore and he is a good boy. I think he is going to improve.

Again, it says "Baer on a hook"; I guess it is referring to Babb. Every team—every team—I know we do at Georgia, when we get down in scoring territory, we have a goal line offense. We have a particular set of plays that we use when we get down in scoring territory. When we get down inside the ten or around—close to the goal line, we have a goal line offense. Now, to my knowledge the last time that Coach Butts saw Georgia practice was on Saturday, September the 15th. At that time we did not have the goal line offense. We didn't make the final game plans for the game against Alabama until Monday, so I don't know about that.

Now, "Babb on a hook on the goal line"; you have to have a hook pass on the goal line, because you are limited down there by the end zone, and you can't run out of bounds, so you have to—a guy has to go down there and hook. Everybody has a hook pass. That is one of the simplest passes in football. Every team has a hook pass.

Q. If I remember your testimony—I mean, your statement while the reels were being shown, several passes were thrown by Alabama which you described as hooks?

A. Yes, sir; yes, sir.

Q. All right, sir. Next one.

A. "Slot to right, ends normal (three yards)."

Q. Does that say "end" or "ends"?

A. We don't have any double slot. That is what that would have to mean to me.

Q. All right, sir, go ahead.

[fol. 629] A. I mean—it says "ends normal (three yards)." We don't have—we didn't have a formation at Georgia where we split both ends.

Q. Next one.

A. "Right halfback on fly, left halfback, quarterback gives to left half, left guard pulling blocks on corner." I can't figure that one out.

The Marshal: Order, please.

By Mr. Schroder:

Q. All right, sir, go ahead.

A. "Slot or wide slot"; the year before we had used a wide slot, but we didn't have a wide slot at Georgia for the Alabama game. We had what we referred to as a tight slot, but the year before I know against Georgia Tech, I think we scored a touchdown from a wide slot formation, we didn't have any wide slot for the Alabama game, didn't practice one.

Q. All right, sir.

A. "Can't quick kick." Well, since I have been at Georgia coaching there, we have—I know when we had

Bobby Walden, he was probably the greatest kicker in the country, and he established the Southeastern Conference Record, and he led the Nation in kicking, and he is a great kicker, and we put in a formation which we got from the University of Texas which we kind of copied from them. We get this information from all schools. We copied this from the University of Texas. We call it the quick kick formation, which we kick quick from, and it is actually a double wing formation where we line up the man that is going to kick the ball about eight yards behind the center, and we snap him the ball and he can either quick kick the [fol. 630] ball or he can run or he can pass, and this doesn't change a single thing as far as our offensive playing is concerned. It doesn't change the blocking assignments or anything. We say "quick kick formation" and call the play. For two years Jake Saye has been kick quicking out of this formation, has been throwing the ball, and he was a good quick kicker, and we have gotten off some wonderful quick kicks.

Q. Is it Bobby Walden who used to kick from the same formation?

A. Yes, sir.

Q. In your regular punt formation, how far is the man who is to do the kicking, how far is he from the center?

A. Oh, about thirteen yards, any where from twelve to thirteen.

Q. You more or less leave that up to the individual to select how far back he ought to get?

A. Yes, sir; and it is according to how hard our center can snap the ball, how fast you can get it back there. Some of them are a little bit slow on that.

Q. Next one.

A. "Slot right, left half—" I can't—

Q. That is "right half on fly, screen to him."

A. Oh; "slot right, right half on fly, screen to him." We don't have any play like that. We screened in the Alabama game, but we screened away from the fly man. We didn't screen to the fly man. We don't have any such play as screening to any fly man.

Q. Next one.

A. "29-0 series." We don't have any 29-0 series. We have an outside belly series at Georgia which is an 029 or 048 or 037 slant or 036 slant.

"Babb catches everything they throw." Well, I mean, that is—

[fol. 631] Q. A matter of opinion, isn't it?

A. As far as I am concerned, that is just a ridiculous statement. I don't think any pass receiver could catch everything they throw. I don't see how they could.

Q. Top of Page 7?

A. "Slot right, left end out 15 yards." Now, this, evidently, this says "slot right, left end out 15 yards." Well, that is a pro formation. This is the formation—

Q. That is what you know as the pro formation at Georgia?

A. Yes; in my terminology, in our terminology at Georgia that is a pro formation. Now, that was the formation that Georgia and Alabama used in the ball game. Also about this formation sometime in August last year Coach Butts called me in his office, and he had a boy there—he is now a doctor—his name was Dr. Virgil Peavy, who was the academic grades and so forth. See, the boys went to class and all that, so we went in the office and he told me that he had run into Coach Bryant somewhere, and Coach Bryant was talking to him about this formation.

Mr. Cody: I don't think that is admissible.

The Court: That is hearsay.

Mr. Cody: Let's do it in legal fashion.

Mr. Schroder: That's already been in the case, Your Honor, about Bryant notifying—

[fol. 632] The Court: I don't remember anything about Bryant and Dr. Peavy.

Mr. Schroder: No, sir; not about Dr. Peavy, about the bomb play, the first time Alabama got the ball. It's been already told—

The Court: This is hearsay.

By Mr. Schroder:

Q. Pass on to the next one.

A. "Drop end off, Georgia, contains with tackle (defense)." Well, that is standard in any defensive plan. You have to have a defense where you drop the ends off to cover the flat, and, of course, when you drop the end off, there is no way you can contain the passer unless the tackle does contain him or else you stun the tackle and the linebacker can contain him.

Mr. Schroder: That's all, Your Honor.

The Court: All right, sir, Mr. Cody.

Mr. Cody: Will you identify this for me, please, Defendant's Exhibit No.—what is that, 18?

The Clerk: That will be 19.

[fol. 633] Mr. Cody: All right.

The Clerk: Defendant's Exhibit No. 19 for identification is a copy of a letter dated March 26, 1963, to James H. Therrell from John W. Gregory.

(Whereupon above document was marked for identification only as Defendant's Exhibit No. 19.)

Cross examination.

By Mr. Cody:

Q. Coach Gregory, let me read you one paper and ask you if you signed it. It is addressed—dated March 26, 1963, heading: "Athens, Georgia."

Mr. Schroder: I don't believe it has been introduced in evidence yet.

The Court: He doesn't have to introduce it in evidence; he has to identify it first.

Mr. Schroder: He hasn't identified it if the witness hasn't seen it.

The Court: You have to refer to the date—the date and who signed the letter and so forth. You will have to properly identify it.

[fol. 634] Mr. Cody: It hasn't been introduced.

The Court: No, sir; you don't have to introduce it, not yet.

By Mr. Cody:

Q. This is a letter dated March 26, 1963, headed: March 26, 1963, headed "Athens, Georgia"; addressed to Mr. James H. Therrill, Assistant Attorney General for the State of Georgia. Is that your signature?

A. Yes, sir.

Q. You mind if I read this to you just a moment?

A. No, sir.

Q. "After viewing the alleged notations made by George Burnett while listening to an alleged telephone conversation between Wallace Butts and 'Bear' Bryant on September 13, 1962, it is my opinion, as one of the coaches of the University of Georgia football team, that if such information was given to Coach Bryant before the opening game of the season, it conveyed vital and important information with respect to the offensive and defensive plays, patterns and formations that could have been of value to the University of Alabama football team, and could have effective the outcome of the game on September 22, 1962." You say you signed that?

A. Yes, sir.

Mr. Cody: You can come down.

[fol. 635] Redirect examination.

Q. What were the circumstances under which you signed that?

A. I was called in to the—

The Court: Well, now, you—go ahead; go ahead.

Mr. Schroder: I think he's got a right to explain it.

The Court: I will let him explain it, but you can't impeach your own witness.

Mr. Schroder: Impeach him?

The Court: Go ahead.

By Mr. Schroder:

Q. What were the circumstances under which you signed that?

A. I was called into the head coach's office, Johnny Griffith, by Johnny Griffith, and he told me that the Attorney General had sent these prepared statements over there, and that they were trying to keep the assistant coaches out of it, but looked like they were going to get involved in it, and he showed me these notes, and at that time, I just kind of glanced at them. I didn't have—I didn't study them. I just glanced through them, and so forth, and then Mr. Griffith carried me up to the President's office, [fol. 636] Dr. O. C. Aderhold, and had copies of this statement typed by his secretary. I was in the office and Coach Griffith brought this statement in there, and I borrowed Dr. Aderhold's pen and signed this statement. You know, the coaching profession is a little precarious, and I was afraid that if I didn't sign this statement and go along with the head coach he has the authority to hire and fire his assistants, at his own discretion, that my job would be in jeopardy.

Q. Was anything said about this record being kept out of the public?

A. Yes, sir. Johnny Griffith the head coach at Georgia, told me—

Mr. Cody: Your Honor, I think, that is—that is getting back into hearsay, Mr. Schroder knows that.

The Court: Yes, sir; I will let him go into it.

Mr. Schroder: I think he's got a right to go into it to explain—

The Court: I think he can explain it.

Mr. Schroder: —conduct.

The Witness: Johnny Griffith, the head coach at Georgia, told me that the statement would not be made public; that they were going to carry this over to the Attorney General's office, and it would be placed in the files and that no [fol. 637] one would have access to it, and it wouldn't be

seen. And several days later it was published in the paper.

Mr. Schroder: Thank you. That's all, Your Honor.

Mr. Cody: You can be excused, Coach Gregory.

By Mr. Schroder:

Q. Was the statement true—is it true today?

Mr. Cody: Well, that is a conclusion; that is a conclusion.

Mr. Schroder: That is not a conclusion.

The Witness: You noticed in this statement I did not sign the statement.

Mr. Cody: He can't impeach his own statement.

The Court: Did you view these notations, Coach Gregory? Let me ask you this.

Examination.

By the Court:

Q. Before you signed this statement, did you view these notations?

[fol. 638] A. I just glanced through them, Your Honor. I didn't—I didn't study them.

Q. When was this, on March the 26th?

A. Well, I can't recall the exact date.

Q. I mean, it was after it was published in the Saturday Evening Post?

A. Well, I don't even know the date the Saturday Evening Post article was published.

Redirect examination.

By Mr. Schroder:

Q. But this was after—the Judge wants to know if, it was after the Post came out?

A. This was when the Attorney General—

Q. Was it after the Post article was published?

A. Yes, sir.

Examination.

By the Court:

Q. And had you seen and read the Post article?

A. Yes, sir.

Q. And then you saw the notations—I imagine it was a photostatic copy?

A. I imagine so; it was just—just a copy.

Q. And it is your testimony—am I correct in this, I want to be sure—it is your testimony that Coach Griffith, and who else put pressure on you to sign it?

A. Well, I didn't—I didn't say anybody put pressure; I just said that I felt—I didn't say that. I said I felt that if I didn't sign the notes that it would jeopardize my job.

[fol. 639] JAMES WALLACE BUTTS called as a witness, having first been duly sworn, testified as follows:

Direct examination.

By Mr. Schroder:

Q. Your name is James Wallace Butts?

A. Yes.

Q. You are the plaintiff in this lawsuit we are trying here today?

A. Yes, sir.

Q. Where do you live, Coach Butts?

A. 1490 South Milledge Avenue, Athens.

Q. How long have you lived in Athens, Georgia?

A. Since 1938.

Q. Where did you receive your education, Coach Butts?

A. I graduated from the Georgia Military College, in Military prep school, and later Mercer University in 1928.

Q. After you had graduated from Mercer did you then go into the coaching profession?

A. Yes; I coached four years at the prep school at Madison A. & M. School, and three years at my Alma Mater,

the Georgia Military College, in Milledgeville, and three years at Male High School in Louisville, Kentucky. Then, of course, I moved to the University of Georgia as assistant coach, 1938. In 1939 I was made the head coach. I retired from that position following the 1960 season.

Q. What is your age?

A. Fifty-eight, sir.

Q. Other than the three years that you coached in Kentucky, [fol. 640] you have spent your entire time here in Georgia?

A. Yes, sir.

Q. During the years that you were head coach at the University of Georgia, as head football coach, how many times did you produce a Bowl team?

A. Well, with the cooperation of so many good football players, we made eight Bowl engagements.

Q. Could you name those for me, please?

A. We played in the Orange Bowl three times, the Orange Bowl being the first Bowl game that the University of Georgia had ever played in. We played in the Rose Bowl, the Sugar Bowl, the Oil Bowl, the Gator Bowl, and the Presidential Bowl.

Q. Have you ever coached the College All-Star Teams when they were playing the Professional Football League Champions?

A. Yes; we coached in the All-Star game in Chicago vs the Professional Football League Champions four times, and we, of course, have been in other All-Star games over the years.

Mr. Schroder: May I address the Court a moment, please?

The Court: Sir?

Mr. Schroder: Could I have the original papers there?

The Court: Yes, sir; yes, sir. I have had them here. There are so many orders and things I don't think are pertinent, but the original papers are right on the bottom. [fol. 641] Mr. Schroder: Just the petition, Your Honor.

If it please the Court, this is the—what I am holding in my hand here now is the original petition that was filed by Mr. Butts in this Court on March 25, 1963. Paragraph 4 has been admitted by the Saturday Evening Post, therefore I am not going to go into it, but I would like to read it at this time, if I may.

The Court: All right, sir.

Mr. Schroder: "Plaintiff," being Wallace Butts, "during his career, has enjoyed a national reputation as a successful and respected member of the coaching profession, and has been accorded many honors, among which was his election in 1959 as President of the Football Coaches Association, a national organization of football coaches throughout America. Upon invitation he has coached the College All-Stars, the Blue-Gray All-Star Game, and the North-South All-Star Game. Plaintiff has, during his career, been widely sought as a speaker and lecturer on various aspects of football, and has spoken at clinics, banquets, and other such public gatherings throughout the United States. In addition, Plaintiff has been approached and offered employment as head football coach by several colleges and professional football teams in the country, due entirely to his reputation as a successful member and leader in his profession."


By Mr. Schroder:

Q. At the end of the 1960 season, Coach Butts, you testified a moment ago that you resigned as head football coach at the University of Georgia.

A. Yes, sir; that is true.

Q. What were the circumstances?

A. I resigned at the end of the 1960 football season because I had had trouble with high blood pressure. The two last games of the season gave me a lot of trouble, and I resigned as the head football coach, knowing then that I would never return as a head coach in college football. I hoped, of course, that I might have the opportunity to coach a professional football team.



Mr. Cody: Your Honor, I don't think that is in response—

Mr. Schroder: Which part of it?

The Court: What is your objection, Mr. Cody?

Mr. Cody: About what he hoped to do. It is not in response to the question.

The Court: I will let Mr. Schroder question him. Maybe the word "hope" is not proper, but I will let Mr. Schroder question him and bring that out.

Mr. Schroder: Thank you, sir.

[fol. 643] By Mr. Schroder:

Q. During the past year, 1962, have you or not been in touch with a national football team with respect to employment?

A. Yes, sir; the Dallas professional football team of the National Football League contacted me.

Q. That—has anyone contacted you regarding future employment as a coach, or in any other area relating to coaching since the Saturday Evening Post article?

A. No, sir.

Q. That is Mrs. Butts and your three daughters seated there on the bench right inside the rail?

A. Yes, sir.

Q. How well do you know Coach Paul Bryant of the University of Alabama?

A. I have known Coach Paul Bryant, first as a player at the University of Alabama when he played the end opposite Don Hudson. I knew him first as a coach when he was an assistant coach under "Red" Sanders at Vanderbilt University, during the seasons '40 and '41. And then, of course, I have known him real well since he was a member of the Preflight School in Athens in 1942.

Q. Have teams which were coached by you played teams coached by Coach Bryant?

A. The University of Georgia played against Coach Bryant when he was a coach at the University of Kentucky. I believe he was a head coach at that institution eight

years. We played against him one time when he was at Texas A. & M.; and then, of course, Georgia and Alabama always play.

Q. During the years that you have coached football, what has been your custom—if you know the custom of other football coaches you might give that, too—with re-[fol. 644] gard to discussing football techniques, coaching points, and the like.

A. Well, Mr. Schroder, I will say this, that I have never turned down anyone who asked me a coaching point.

Q. What is a "coaching point"?

A. Well, any coach, for example, might know that on a particular pass play, that a sideline route is featured in this pass pattern, and at the University of Georgia, one reason, perhaps, that we have had some success is we not only require that the offensive football player running the sideline route run it, but that he be within four yards of the boundary line, which is a coaching point. When I was coaching the single-wing, I think we were perhaps the first in the business, instead of having the passer look for an open pass receiver, we looked at the defensive man in the area that we were throwing, or zone in which we were throwing, figuring that the defensive man cannot be right. That is a coaching point. Does that answer your question?

Q. Yes, sir; but I would now like to ask you, what is meant by teaching or coaching your boys that the defensive man could not be right? You don't get through to me.

A. Well, to explain that, Mr. Schroder, the way we worked out our pass patterns at the University of Georgia, we put a man to the right of a defender, to the left of the defender, and we occupied all of the others in the defensive plan, and for that reason we could say to our passer, if the man running the pass routes run the pass routes as they should, the defensive man cannot be right. Another example; we put one behind the pass receiver and one in [fol. 645] front. We occupy the other receivers with our plan. We then can tell the passer that the pass defender cannot be right.

Q. Well, he cannot be right if he's got to cover two people, could he? Is that what you mean?

A. Of course, Mr. Schroder, we cannot accomplish this on every occasion, but that is what we try to do.

Q. All right, sir. During the year 1962, in particular, did you or not have occasion to talk to Coach Paul Bryant over the telephone, as well as in person, and if you did, would you relate to the Court and Jury the approximate number of times that you did do that?

A. It would be impossible for me to—to tell the Jury or anyone else the number of times that I have talked to Coach Bryant, or called him, but I have called him several times, and I have talked to him several times. Of course, the first time that I called him during the summer of 1962 was in regard to certain rule changes, or rather, I learned in Buffalo that rules that had been a part of the Rules Committee, the enforcement of the same would be improved.

Q. Well, in that area, why were you in Buffalo? What was going on there?

A. When I was President of the College Football Coaches Association of America, the idea was originated that since there were so many All-Star games throughout America, that the football coaches should sponsor a game of that kind and it could, in time, become the best of them all. So we lined up the Eastern Kodak Company to back this project, and it was started during my time as the President of the Association. For the past two summers such a game has been played in Buffalo, New York. On that occasion it is customary for the Board of Trustees of the Football Coaches Association of America to meet, and as past President it was my privilege in 1962 to attend an [fol. 646] informal meeting in which this particular phase of football was discussed, and the coaches in the meeting that day were in agreement that defensive football was getting a little out of bounds, that football coaches, in their enthusiasm in teaching defensive football, and chasing in pursuit, which is chasing the football player and demand-

ing that every defense man contact him with some part of his body, it was getting a little tough; and so the coaches themselves requested that, or planned to request that the officiating be strict in that area.

Q. Were you attending that meeting in Buffalo as a member of the Football Rules Committee?

A. Well, I was not an important member of the Rules Committee at the time; I was an interim member at large of the Rules Committee, but I felt that if I talked to Coach Paul Bryant, who, in my opinion, is the chief exponent of defensive football techniques, defensive football in general in this part of the country, and perhaps the United States, that I would be doing football, the game of football service.

Q. In what respects?

A. Of course, Mr. Schroder, the objective of most of the coaches that I have ever known is to win football games, but I have never—I have never known a football coach that willfully responds to anything that would cause unwarranted injuries, and I think defensive football at that time had reached that stage.

Q. And you discussed the topic with Coach Bryant because you say that he was one of the leading exponents, or what is it? I didn't exactly understand you.

A. Coach Bryant's record speaks for itself on defense. I sympathize with anyone who has to play him.

[fol. 647] Q. Was he, therefore, contracted as a leader of defensive football?

A. As a leader. I picked him out of all the Southeastern Conference coaches in this area; although I will say this, that Coach Frank Howard, of Clemson, is really the representative of the Third District of the N. C. A. A., the Third District would cover, of course, the Southeastern Conference. I'm not sure how many colleges or universities are represented in that group.

Q. Since your call to him—I believe you said it was either in July or August, 1962, when you came back from Buffalo?

A. I'm not sure about the date, but I think it was in late July.

Q. Had you previously discussed matters with Coach Bryant over the years?

A. Coach Bryant has been the head coach and athletic director at the University of Alabama for the past five years or six years, and since he returned to Texas A. & M.; I have called him many times.

Q. Have you called him, or talked with him since the conversation you have just related took place in July, 1962?

A. I have talked to him several times on the telephone. I have talked to him at least three times in person, that is, prior to the football season of 1962.

Q. Did you or not continue to talk with Coach Bryant throughout the season of 1962?

A. Yes, sir; the record will show that I did. I have called him many times, I am sure, on impulse, for no reason.

Q. On September 13, 1962, the Saturday Evening Post charges that you and Coach Bryant had a telephone conversation with each other, and that during that conversation [fol. 648] you gave Coach Bryant had a telephone conversation with each other and that during that conversation you gave Coach Bryant detailed information relating to the secret plays, formations, and defenses which the University of Georgia had in its game plan for the Alabama game. What is your answer as to that?

A. Emphatically no.

Q. Do you recall having any conversation at all with Coach Bryant on September 13, 1962, or on September 16, 1962?

A. Mr. Schroder, I have talked to Coach Bryant several times, many times over the years. I cannot positively identify one call from another, or give the date.

Q. The first time that that particular phone call, or those two phone calls were brought to your attention was some months after September, 1962?

A. The first time I heard about it was when I received a call.

Q. First time you heard about what?

A. The telephone call.

Q. What telephone call?

A. Purported to have been between Wallace Butts and Paul Bryant.

Q. On what occasion?

A. No date was given me; I received a call from Atlanta.

Q. When was the call made to you from Atlanta?

A. I—when I was attending a funeral in Philadelphia; I do not remember the date.

Q. Was it after the first of the year?

A. Yes, sir.

Q. Could it have been around the last day of January?

[fol. 649] A. I believe it was January the 30th, or late the night of January 30th.

Q. That would have been over four months since—after September 13?

A. Yes, sir.

Q. All right. Now, who made that call to you? Just a moment; just a moment.

Mr. Schroder: Your Honor, this might be considered hearsay, and unless Mr. Cody would permit me to go into it—

Mr. Cody: I would like to know who it was.

The Court: You can ask—is it pertinent as to who called him?

Mr. Schroder: I think it might be linked up later; yes, Your Honor.

Mr. Cody: I have no objection.

Mr. Schroder: He has no objection, so I will go forward.

The Court: All right.

By Mr. Schroder:

Q. Who was the party that called you, and what was said by that party and by you on that occasion, January 30th or 31st, 1963?

[fol. 650] Mr. Cody: Well, I object to the contents of the call; I have no objection to who it was calling. That is the question you asked him.

The Court: Yes, sir. Well, I will sustain the objection.

Mr. Schroder: I did not want to go into it. I acknowledged it is hearsay, and I wasn't going into it unless Mr. Cody let me.

The Court: All right, sir.

A. (By the witness) Mr. John Carmichael called me.

Q. Who is he?

A. He is an acquaintance of mine.

Q. What do you mean by "acquaintance" of yours?

A. I have known him for a number of years.

Q. How well?

A. I have never known him too well. I know who he is, and he's always been friendly to me, and it's been the same in my case.

Q. You know him socially?

A. No, sir.

Q. Business-wise?

A. No, sir; I have never been in any business with him. One time Mr. Carmichael did sell me some stock, I believe. The company didn't thrive too well, and he refunded the money, and I appreciated that.

Q. Have you ever been in his home?

A. No.

Q. Has he ever been in your home?

[fol. 651] A. No.

Q. In that conversation was any mention made of a so-called telephone interception?

The Court: I believe you are going into conversation, Mr. Schroder.

Mr. Schroder: All right.

The Court: Of course, I realize there is going to be a certain type of hearsay evidence in this, but I think this particular kind is inadmissible.

Mr. Schroder: All right.

By Mr. Schroder:

Q. Throughout the years when you and Coach Paul Bryant, or you and any other coach have discussed football, has there ever been any occasion when you told Coach Bryant, or any other coach, what plans you, when you were coach, what plans Coach Griffith, who is now the coach, planned to use in any game involving Coach Bryant, or those other coaches?

A. I have never known the game plan of Coach Johnny Griffith.

Q. What is game plan?

A. The game plan is necessary for every game, because every team has quite a number of plays, all of which cannot be used in any one game, and usually the offensive and the defensive plan is outlined for the players. I am not [fol. 652] sure exactly what the plan is at the University of Georgia at the present time.

Q. Well, is your answer to the question I asked you "yes", or "no"; or do you remember the question?

A. I want the question asked again, sir.

(Whereupon the Reporter read back the question.)

A. Mr. Schroder, the question is a little vague to me.

Q. All right, sir. I admit it is too long and ambiguous, perhaps. Have you, in any conversation with Coach Bryant, over the telephone or in person, ever discussed with him what the University of Georgia planned to do in a game to be played between Alabama and Georgia?

A. No.

Q. Is there any doubt in your mind about that?

A. Absolutely not.

Q. Is Coach Bryant the only one in your profession that you talked to in person or over the telephone?

A. The records show that I have talked to quite a few coaches, and I will say that I have slowed down on that. I used to talk to a lot more than I have in recent years.

Mr. Schroder: Under the rules as I understand them, Your Honor, the witness can refresh his recollection from any document which he knows is accurate?

The Court: Yes, sir.

Mr. Schroder: I am not asking the witness to read from the document, but merely to read from it—but merely to read it, and after—

[fol. 653] By Mr. Schroder:

Q. After your recollection has been refreshed, tell us some of the coaches and other athletic people to whom you have talked over the last number of years.

The Court: As I understand, Coach Butts is not going to read the document; he is going to read the document and refresh his recollection, and then testify.

Mr. Schroder: That is what I instructed him.

A. (By the witness) I do not need this record, Mr. Schroder, to remember some coaches I have called. I have been close to Ray Graves.

Q. Who is he? Now, identify him.

A. The head football coach at the University of Florida.

Q. You say you have been close to him; have you talked with him over the telephone?

A. I have talked with him over the telephone. I have talked to Frank Howard, the coach at Clemson. I have talked to Coach John McAlonso (?), at the University of Pittsburgh. I have talked to Bob Woodruff, the former coach of the University of Florida; now the athletic director at the University of Tennessee. I have talked to Coach Clyde Earhardt, coach at the Presbyterian College, Clinton, South Carolina. Coach Bob Ford, former coach at the University of Atlanta and the University of Kentucky. Is that sufficient, Mr. Schroder?

Q. In your conversations with these coaches that you have just named—well, I'll put it this way; is that all that you have talked to?

A. No, sir.

[fol. 654] Q. All right, sir. In the conversations which you have had with these various coaches and athletic directors, was or was not football in general discussed?

A. I have talked football with every football coach I have ever been around. I started my football career when I was fifteen years old as a football player at the Georgia Military College in Milledgeville, and I have talked and lived football since that time. That was a long time ago.

Q. Well, let's get it up to more recent years. Have you talked or have you not talked with many coaches in the last two years on the subject of football in general?

A. I have talked to several coaches about football in general the last two years, but actually, the coaching game has grown away from me just a little bit. A lot of the coaches that I coached against are not in the coaching profession any longer, so naturally that would cut down on the number of calls made to people of that kind.

Q. Now, as athletic director at the University of Georgia, what were your responsibilities?

A. My responsibility, of course, was to plan the budget covering all sports. I had responsibility for supervising the making of schedules, and general supervision of the entire athletic program at the University of Georgia.

Q. I believe it's been testified to already that Paul Bryant held the position as athletic director, in addition to the position of head coach, football coach at Alabama?

A. That's true.

Q. What were some of the things that you and Coach Bryant did talk about when you were talking to him, re-[fol. 655] lated to matters covering the University of Georgia and Alabama?

A. Well, of course, Mr. Schroder, football is a big business, and there are a lot of things business-wise that must be discussed between athletic directors.

Q. Such as what?

A. For example, in the case of the University of Georgia and the University of Alabama, it is very important to the University of Georgia that the football game be played every other year in Birmingham, Alabama instead of Tuscaloosa, for two reasons. It's tough enough to play Coach Bryant any place, but in Tuscaloosa it's awful; and

the, of course, it's a difference of forty to fifty thousand dollars in the check that Georgia will receive, for that matter.

Q. Well, in that—

A. Then, of course, we have talked about the possibility of putting lights in at Athens. We have had some games over there when it was so hot that it was almost impossible for the spectators to survive. We have talked about moving the game back where it used to be, on a November date, which has proved impossible so far because the University of Georgia has so many national rivals playing in November.

Q. You talked about the difference in the game being played in Tuscaloosa and in Birmingham with respect to the financial aspects; where was the game scheduled to be played?

A. We have contracts with all of our opponents, and in the game contract between Georgia and Alabama, it is up to the University of Alabama to select the site of the game when it is played in the State of Alabama.

Q. In your conversations with Coach Bryant relating to playing the game in Birmingham, you have said, I think, [fol. 656] that it would mean forty thousand dollars more to each team because of the site where it was played?

A. That's about the difference, but I am giving only an approximate figure, the reason being that the stadium is larger. As another reason, the student body at Tuscaloosa takes up a lot of the seats, and some of them do not come to Birmingham. That is perhaps a selfish reason, but we did figure on it.

Examination.

By the Court:

Q. What would be the total seating, Coach, for a game—without getting into percentages—like the Georgia-Alabama game, the game of '62?

A. Your Honor, our check is—

Q. Approximately.

A. —approximately ninety-eight thousand, which is about the same as the check we received in Jacksonville.

Q. That would be Georgia's share?

A. Yes, sir.

Q. Roughly, it would be two hundred fifty or two hundred seventy thousand gross?

The Court: All right.

Direct examination (continued).

By Mr. Schroder:

Q. You have testified, I believe, that you and other coaches discuss these coaching points. Would you or not [fol. 657] have coaches come to you about your passing techniques?

A. Mr. Schroder, I hate to say this, but I had a very dignified gentleman in the coaching profession spend three days in my basement playroom, the late Gene Neyland. It is true that I was the first one to introduce the "T" formation in the South. I have had many coaches come to me for information; I have never refused one. The last lecture I made on pass offensive, for example, I had more than sixty letters requesting additional information, and I complied with the requests. I think you will find it true that the coaches that know a lot about football are perfectly willing to share the information they have.

Q. Have you sought information or help from other coaches?

A. Mr. Schroder, the University of Georgia has established the all time offensive record for the Southeastern Conference with the single-wing, and of course, it made me a good coach, but I got most of my information from two other coaches, Carl Snavelly, then the coach at the University of North Carolina, and the late Dick Harlow of

Harvard. I went up to see Coach Dick Harlow, and I asked him for information, and he was a little busy and I had to follow him around, and finally I told him to sit down and draw the whole thing, which he did, and we named the offensive for Dick Harlow, then the coach at Harvard. We called it Harvard 3, Harvard 4, Harvard 7. I did give him that much credit.

Q. It is true, from what you have said, then, in your profession coaches willingly, it's unwritten law that they do help each other when they are asked to on specific techniques or plays or coaching points?

[fol. 658] A. Well, to give you an example, Mr. Schroder, you know I have a contemporary, his name is Robert D. Dodd. I would not hesitate to go out and see Coach Dodd and ask him for information on coaching points, and I am sure Coach Dodd would tell me exactly how he ran his plays, giving the coaching points, if I requested this information.

Q. Speaking of that, and particularly the school where Coach Dodd is connected, how do you feel about knowing Bryant as well as you did, when Georgia Tech plays Alabama?

A. Mr. Schroder, I pull for Georgia Tech in every game they play except when they play the University of Georgia. That is rather strange, and I know it. I pull for Auburn to beat Alabama because of my friendship with Coach Ralph Jordan, who was associated with me at the University of Georgia for seven years. Of course, when he played—when Coach Bryant played Bud Wilkinson, I pulled for Alabama because they were representing the Southeastern Conference.

Q. Who is Bud Wilkinson?

A. Bud Wilkinson is one of the finest football coaches ever developed in America; President of the Football Coaches, and athletic director at the University of Oklahoma. Also, he head up the Kennedy Physical Fitness Program.

Q. You know him?

A. Very well.

Q. Wilkinson?

A. Yes, sir. In fact, I have called him many times.

Q. Passing briefly, or passing for the moment to the so-called Burnett notes, I want to ask you a few questions about those, and if Mrs. Stilwell will be kind enough to hand the original to you, you can follow me as I refer to [fol. 659] them. It is contended by the Saturday Evening Post that in a telephone conversation between you and Coach Paul Bryant on September 13, 1962, that you told Coach Bryant the following things, the first of which is, and I quote: "Reismueller greatest in history." I will ask you with reference to that quotation, first, whether you have ever discussed the man whose name I have just mentioned with Coach Bryant at any time, assuming in my question now that what they were talking about was what—what they were talking about here when they wrote it down here was Rissmiller, and not Reismueller?

A. Mr. Schroder, the answer to that is that I have talked to Coach Bryant about Rissmiller. Coach Bryant was a little concerned about the recruiting of Rissmiller for the University of Georgia, and I have talked to him about it, and I assured him that Rissmiller came to the University of Georgia because his uncle lives at Cedartown, Georgia, and because it was his desire to come to the University of Georgia.

Q. Is that—excuse me.

A. In connection with that, Coach Bryant has asked me: What kind of a football player is Rissmiller? The only thing that I have ever said to Coach Bryant, or anyone else about Rissmiller is that he is the finest physical specimens that I have ever seen in football. I have never told Coach Bryant, or any other coach, that Rissmiller could be trapped, that Rissmiller would or would not carry out his offensive assignment. I have never put my judgment up against the judgment of the coaching staff at Georgia.

in regard to Rissmiller. I would not pass on how good a [fol. 660] football player he was until I could watch him in group work, which I never have, and also I would have to have the benefit of the grades, which are kept on every football player—

Q. What sort—

A. —because for a football player to be good, he must be consistently good.

Q. What do you mean by grades kept on a football player? You mean in school?

A. I think it is true that every football player that plays in the Southeastern Conference, or any other place where the football competition compares to the competition in the Southeastern Conference, that everything that a football player—any position he does is graded.

Q. Graded by his coaches?

A. Graded by his coaches. The work is usually divided up among the coaching staff, and each coach is assigned one of the—one or more of the players.

Q. The information upon which a coach might grade the player to whom he is assigned is obtained how?

A. By studying the movies.

Q. You remember discussing with Coach Bryant something about the recruiting of Rissmiller? Was Coach Bryant likewise interested in getting that boy to go to the University of Alabama?

A. Mr. Schroder, I would like to say this. I enjoyed Coach Bryant's disappointment in not getting Rissmiller.

Q. Then I assume he was interested in getting him over there?

A. I think a lot of colleges and universities were interested in him, because he was selected in the State of Penn-[fol. 661] sylvania as one of the two or three best tackles in that State his senior year.

Q. Is what you have just said the extent of any discussion that you ever had with Coach Bryant that you recall, in which the name Ray Rissmiller was mentioned?

A. I repeat, I have never said to Coach Bryant, or any other coach playing against the University of Georgia, anything about the detailed play of Rissmiller.

Q. All right, sir. Let's pass on to the next one. I will read it; it's on Page 2. "Rakestraw to right", and there is a line drawn under that, and under the line is written, "optional left pass, if can block man on corner, keeps running". Now, I don't know whether the author or authors of these notes meant for that to be two separate entries or not, so I am going to ask you, first, to discuss the language above the line separately from that below the line, and then ask you to discuss the entry below the line; and, third, then discuss them as if they all meant the same thing. Now, "Rakestraw to right" means to you, if anything? Go ahead.

A. Mr. Schroder, that does not mean anything to me. I would like to say that I have never told any coach that Rakestraw goes to the right or left or forward or backward. I hope he will go forward in the football games next fall.

Q. Next entry reads: "optional left pass"—entry below that line to which I was referring a moment ago—"optional left pass, if can block man on corner, keeps running". What, if anything, does that mean to you, is my first question; and my second question is, whether or not you have ever discussed with Coach Paul Bryant information con-[fol. 662] tained in the quotation which I just read, to the best of your knowledge?

A. I would like to take the bottom part of that statement first.

Q. Do it as you wish, sir.

A. I think it would be true that every offensive plan, almost every offensive plan in football, as related to the passing game, has three types of passes, a drop-back pass, which the quarterback, for example, would drop straight back to the center approximately seven yards and set up to throw. A pass called a roll-out pass in which he would be

required to fake usually to the fullback and the offensive set. And a sprint-out pass in which the quarterback would simply take the ball and sprint as fast as he could to the corner of his offensive man, watching for indications, reading the defensive plan.

Coach Paul Bryant, at times, however, has played entire football games without ever using—without ever using a drop-back type pass. He is an expert on the roll-out type pass, and it might be that since he has Joe Namath, that he is going to drop-back type pass. Coach Paul Bryant and Coach Bud Wilkinson are two of the best exponents of that type of football I know. I have learned a lot of football from them on an option pass, which in the case of Bud Wilkinson I am sure instructions are to the quarterback, sprint to the corner, and any time you can gain three yards, take the three yards and never throw, never throw until the receiver is wide open. That would mean the option pass I have described.

This "option left pass" to me describes the pass route which either originated with me or Coach Frank Leyhe of Notre Dame. We called it the same thing. We have had about ten coaching clinics at the University of Georgia during my coaching time. This expression has been used, I am sure, that in the State of Georgia today there are fifty, a minimum of fifty high school coaches that would know exactly what you are talking about when you mention that pass route. Since I have lectured on the subject of football all over the United States, I am sure there are people all over the United States. If you would like for me to, sir, I will take the blackboard and show you the original plan which was completed seventy per cent of the time when we were employing the single wing offense, if that will—

Q. Seventy per cent of the time?

A. Well, if we threw it a hundred times, we complete seventy.

Q. Is that considered fairly good?

A. Mr. Schroder, we never thought we were doing very well unless we completed better than fifty per cent, but we have had a lot of passes that we had to drop because our percentage was very bad.

Q. You mentioned the fact that optional left pass was something that, I believe you said, you and Frank Leyhe of Notre Dame devised?

A. To my knowledge we were the first coaches that took advantage of the possibility of the same.

Q. Do you know whether or not the University of Georgia now uses that terminology?

A. I heard Coach Johnny Griffith testify that this pass was used in 1961 in the University of Georgia vs. the University of Florida football game at Jacksonville.

Q. Wasn't that the Miami game he was testifying about?

A. Well, you are right; it was Miami.

[fol. 664] Q. And it was called optional left pass? All right, sir, will you please show the Court and Jury what it is that we are talking about when you talk about optional left pass.

A. As I said, this was used first from the single wing. This is a tight line which is something you gentlemen studying football haven't seen much of.

Q. On the blackboard?

A. On the blackboard. Now, the halfback and the line-backer are the two men that we worked on on this offensive plan. First of all, it was our objective to keep the line-backer out of the pass defense so the ball was snapped directly to the fullback who executed a full spin, handing off to the tail back or left half who stepped in to take the ball from the quarterback, and then was back in passing position seven yards deep. The left end ran what we call a deep route, running to the inside of the halfback playing this position, and then heading for the flag. That, of course, is in the corner of the field. The onside end ran what we call a hidden route so that he would be in position either to con-

tinue that route or fake a block on the linebacker. And then he is usually about twelve yards deep. The safety man here had to be occupied because with this plan we were isolating the right defensive side back. The wing back was through the safety man. The tail back dropped back in passing position, and then we told him—of course, we were not always right in what we told him—the defensive man could not be right. As soon as you set up, you look for the defensive man playing that position. There would be a man in front of him and a man behind him. You know that your pass receivers are disciplined. They will be on the right. You throw to the man that is open. I imagine that Van Davis, [fol. 665] who was then playing the right end at the University of Georgia, caught more passes in one season than any football player has ever caught in the history of Southeastern competition, so that is what optional left means, to apply it to the T-formation.

Q. Don't go through—it is the same pattern in that T-formation?

A. Same pattern.

Q. All right, sir. Coach Butts, my second question relating to that entry, or those two entries is this: Do you have any recollection of ever having discussed that with Coach Paul Bryant before Georgia played Alabama in 1962?

A. Absolutely not, in regard to the University of Georgia. The University of Georgia had optional passes. I have never studied them or relayed this information to anyone going to play the University of Georgia.

Q. The next entry reads, "well disciplined ball club, added two coaches". What is your testimony, Coach Butts, with reference to whether or not you have ever discussed that topic with Coach Bryant before the University of Georgia and Alabama met in 1962, in September of that year.

A. Mr. Schroder, before the game between the University of Georgia and University of Alabama, I had never

seen the University of Alabama—University of Georgia scrimmage the first team against the second team. I would have no idea how well disciplined the University of Georgia was under real competitive conditions that could be compared to game conditions. I thought the University of Georgia had a well organized team in that I thought in their group work they moved smartly and quickly to their different groups. They did not have lost motion on the field. I [fol. 666] had no way to know what kind of discipline they had, and I would like, if you will give me permission—

Q. Let me get an answer to my question, Did you discuss the discipline of the University of Georgia Football team with Paul Bryant at any time before they met in September, 1962?

A. Not that I know of. I can go to the blackboard and show you the application of discipline, and frankly under game conditions, although I do not care to criticize anyone. I can show you what lack of discipline under game conditions can do in a football game, and the reason I'd like to do that, I have been accused of rigging and fixing a football game, and I can show you where Alabama got easy touchdowns, and in so doing I will not blame any coach, I will not blame any players, because I understand that the University of Georgia had a number of sophomores, and I don't know any worse sentence you can put on anyone than to have them introduced into Southeastern Conference football in a game against the University of Alabama.

Q. When you say "going to the blackboard" you are referring to showing something that was on the film demonstrating what was done at the game; is that what you mean?

A. The gentlemen of the Jury have seen the pictures, but I doubt seriously if they have had enough experience with football to realize some of the things that happened.

Q. All right, sir, go ahead.

A. That is an offensive set which I would call slot left, right end split, called by the University, as I have learned

since this case has been in progress, pro left. The first touchdown scored in the football game on September the [fol. 667] 22nd, 1962, in—first, I'd like to say to you that—would it be all right for me to tell them, sir, that I told the Georgia coaching staff about the fact that the University of Alabama was going to use this formation, or is that irrelevant?

The Court: I don't see any objection to it.

Mr. Schroder: You have already told them.

The Marshal: Let's have order, please.

The Witness: ~~I went~~ to the defensive coach in the presence of a boy named Virgil Peavy, whose job it was—

By Mr. Schroder:

Q. That is all right; go ahead.

A. All right. In other words, I showed on the blackboard head defensive coaches at the University of Georgia that this formation, told them that Paul Bryant would major in it against the University of Georgia. The first touchdown came from this thing, this formation, and the reason this formation is used, they've got the running strength, and they have got a defensive man isolated out here, and there cannot be but one man on the field that can possibly cover this man if he goes deep, the only man that can cover him is the man playing defensive position. So, early in the game this Williamson, playing right end for Alabama, did a right; that is what it is called. The defensive man playing for the University of Georgia had been coached [fol. 668] and coached everyday by the defensive backfield coach, a man towards him to the right, he is supposed to back up and make the pass receiver come to him, and if a pass is completed, make it happen in front. That is the rule we all go by. Instead of that, he moved with the fake, and it was a touchdown. That is an example of the lack of discipline as applied in football. You cannot blame this football player; he was a sophomore. It has happened to the best of them. That is an easy touchdown. There is not

any way that could be arranged, but I was up in the press box.

Now, the second touchdown—I will not take them in chronological order or the way they happened in the game. As a result of a lack of discipline, self discipline and carrying out a plan, another touchdown was scored when this man went down on a deep in the end and this halfback was with him. The end was playing—was playing the triangle here off the line of scrimmage, approximately four yards.

Q. Are you referring to the defensive end?

A. The defensive end. The defensive end must cover the next man in the flat or deep flat because he is the only one that can. So the right halfback went out into the deep flat. The sophomore here can't be blamed, but football and football reaction must be a part of the football player. It's got to be instilled by discipline and coaching. This boy playing this position hesitated, and it was a touchdown for the University of Alabama. Georgia, all the time, was playing touch, hard-nosed football, in the line. They were covering kicks well; they were fighting to win. Two touchdowns were scored on that same plan that I have drawn right there, gentlemen.

[fol. 669] Now, we put Williamson out on the other side which would be, from the terminology that you should be familiar with now, at least in part, Williamson is out here, and we have the same setup, a defensive end off the line of scrimmage in a triangle. The University of Alabama employed a play that is used by Georgia; it is used by Georgia Tech; it is used by everybody, the outside belly play. A quarterback—all these men blocked away. The quarterback stepped back, placed the ball into the belly of the fullback, and faked to the fullback, faked in here. The right halfback was on a fly, and he had a wide position. Williamson, the split end, went backfield and carried this right side back of the University of Georgia absolutely out of the play. This end is the only man now who can take care of the pitch man in the event the quarterback keeps

the ball, does not give it to the fullback, keeps the ball and pitches. Absolutely this end here, still a sophomore, and I have emphasized the fact that Georgia was handicapped because of this sophomore material, he went in for the fullback. The right halfback for the University of Georgia could have run a hundred yards. But there wasn't a soul on this side of the field, and that is the application of discipline on a football field under game conditions.

Q. Coach, we will pass on to the following or the next note at the top of Page 3 which reads, and I quote "onside guard, pulls on sweep." First, I want to ask you, did you or not ever discuss with Coach Bryant prior to the Alabama-Georgia Football game any such thing as is in that note.

A. Mr. Schroder, the answer is "no"; I never discussed any type of guard play with him. I do not know of but two teams in America that pull onside guard on sweeps against [fol. 670] the type of defense that Alabama is known to employ, the two teams being the University of Missouri and the University of Delaware, and in the Southeastern Conference, I think if you pull the onside guard against a wide tackle six, a loose six defense, you will have extreme difficulty getting back to the line of scrimmage.

Q. All right, sir: Now, the next entry, reading "don't overshift." I will ask you the same question I have asked you or intended to ask you with reference to the other notes or other entries; did you on September the 13th or at any time prior to the Alabama-Georgia game discuss that entry with Coach Bryant as it related to the University of Georgia?

A. Mr. Schroder, that could not be possible. I do not know of any offensive plan that I could tell any coach any time that he would not overshift against that offensive set or that plan. The first—

The Court: What do you mean by "overshifting"? I am not clear on that.

Mr. Schroder: The lad from Alabama attempted to do it yesterday.

The Court: That overshifting has been in the testimony several different times.

The Witness: Well, Your Honor, sometimes when they don't overshift you can get into a lot of trouble; I can tell you that.

[fol. 671] **The Court:** Does that refer to the defense?

The Witness: Defense; yes, sir; it refers to the defense. Usually, if there was a normal defense, balanced defense, the guards would be somewhere in here, the tackle would be in the normal position, with the ends out in their position, but when you overshift, you would find usually—this is done different ways, but to make it as simple as possible, there would usually be a man here on the center, the guard would be overshifting, the tackle would be overshifting, and the end would be out there, and this man would be tight, this man would be tight, and you would compensate for the overshifting by moving your linebackers back to the other side. That is a simple picture of an overshift.

By Mr. Schroder:

Q. Wait a minute, whoa, whoa. In effect, what you are saying when you say "overshift" is related to defensive techniques, and it could only apply to a defensive technique?

A. Yes, sir.

Q. —the defensive line, instead of playing in the regular—

Mr. Cody: Let him testify, Mr. Schroder.

Mr. Schroder: Thank you, sir.

[fol. 672] **The Court:** I didn't understand your question. I don't know whether it would be—let him ask this question.

The Witness: Yes, sir.

The Court: Young Mr. Pell uses a term "eye-to-eye"; when overshifting, you wouldn't be eye-to-eye; is that correct?

The Witness: No, sir. It would be eye-to-eye on this position here. This man playing head on the center, it would be looking right in the eye, would be eye-to-eye on him, but this football is so technical at times you line up on one eye and at times on the other eye, and it doesn't seem very significant, but it makes a lot of difference.

By Mr. Schroder:

Q. The next entry reads, "Woodward commits fast-safety man." My first question is, Coach Butts, did you at any time discuss that entry or the contents of that entry with Coach Bryant before the Alabama game in 1962 in September?

A. Mr. Schroder, I do not even remember mentioning Woodward's name. Woodward—Brigham Woodward is a personal friend of mine.

Q. My question—answer my question first, and you can explain it. Did you or not discuss with Coach Bryant before the Alabama-Georgia game in 1962?

A. I don't remember ever discussing it with him any time.

[fol. 673] Q. All right, sir. Now, you can explain what it is that that means to you.

A. I would like to show you by demonstration my mental picture of Woodward, which I can do easily.

Q. Doing what?

A. I would like to show you—give me a ball carrier.

Mr. Lockerman: You have got a mighty poor one.

The Witness: Give me one young enough to run, the boy.

The Marshal: Let's have order, please.

The Witness: Will you stand there, please. Woodward is back, the distance will vary according to the situation, say, that he is back twelve yards. I would like to say to you, I have never thought of Woodward as being weak on pass defense. I have worried about him, however, with some of the things he does. He is very aggressive. He wants to make every tackle, and when he approaches the

line of scrimmage, he is in an upright position. I am sure his coaches work on him all the time. I have seen them do it. In my opinion every football player playing the defense should be in a crouch. Now, the danger—first, I'd like to say in defensive football, all defensive football players play ankles. If I come in from this position, the play goes wide. It is possible for me to make tackles on or near the line of scrimmage without too much danger, because pursuit will be coming in that direction, to help [fol. 674] take care of the situation, but when a play breaks through the middle of the line of scrimmage, it is dangerous for any man playing safety man to take a chance, as pointed out by Coach Pierce. The safety man is supposed to prevent touchdowns being scored. So, when Woodward comes up fast, and a block approaches him—come on up, please, sir—and the ball carrier is coming; if the man in the safety position should commit to one side or the other, the ball carrier will certainly take advantage of it. So, what worried me about Woodward was the way he approached the line of scrimmage. I thought he should approach from the front and hold him off and hold up the play so that pursuit could help him. In the picture of the Alabama game, Georgia vs. Alabama, if it had not been for a great tackle by a linebacker—here is Woodward back here. The linebacker, Woodward came up, committed too fast, and went around a block. The Alabama ball carrier would have gone for a seventy-five yard run right down the middle if this linebacker hadn't made a great tackle. Now, that is the only picture I have of Woodward. I have never thought of him as being weak on pass defense. In fact, what he did last year I shall never forget in the homecoming game vs. the University of Kentucky. He came up with an interception which tied the game.

By Mr. Schroder:

Q. Now, would the fact that the safety man committed himself too fast or committed himself fast, would that fact

be of any interest to someone who was preparing to play that team?

A. I can say this, that the offensive set over there, there is not any play that any coach could plan to take advantage [fol. 675] of a man playing the position as I described. Any plan he might overcommit, and frankly I always worry about it, but there wouldn't be any particular play that could take advantage of Woodward in his style of play. It might happen on any play.

Q. How about a—if he did that as a rule, how about a pass play; would that affect him or affect the success of the team playing against the team that Woodward was playing for?

A. Mr. Schroder, I have never suggested a pass play that I think would beat Woodward to anyone, but I think the thing that would beat him or any other player who plays it like he does would be to simulate a running play, make a play look exactly like a running play, and have one man fake a block on him, and get into a pass route.

Q. Well, that, in your opinion, would be the only way that this—

A. That would be the only way, and I know, of course, that at Georgia we have a safety man like that a few years back, and Red Phillips, who now plays right end for L. A. in the National Pro League, was one man out to pass, the first play of the game; it embarrassed us very much; he went eighty yards.

Q. Well, now, you saw the movies yesterday. Did you see at any time where Alabama passed in Woodward's zone where he was supposed to be defending?

A. I saw the picture of the Georgia-Alabama game yesterday, and I never saw a pass in his zone, and I'd like to repeat what I said a moment ago. I have never seen anyone take advantage of Brigham Woodward on pass defense, anyone.

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[fol. 676] JAMES WALLACE BUTTS having resumed the stand, testified further as follows:

Direct examination (continued).

By Mr. Schroder:

Q. The next note, Coach Butts, reads as follows, "Weak defense, anybody except Blackburn". With respect to that entry, I want to ask you, as I have before in connection with other entries, did you at any time before the University of Georgia played Alabama in September, 1962, say anything that I just—like I just read to you to Coach Bryant?

A. Emphatically no.

Q. What does that entry mean to you, if anything?

A. It doesn't mean anything to me.

Q. All right, sir.

A. However, I am sure any coach playing against the University of Georgia would assume that since Georgia unfortunately had to play so many sophomores in one season, that they would have a weak secondary defense.

Q. Passing on to the next note on the top of Page 4 which reads, and I quote, "Baer, split right, split right end out." Did you at any time before the date of September 22, 1962, give that information or state that to Coach Bryant?

A. No; I did not. And I would never use such language.

Q. Passing on to the next note, "Long count, left half in motion." Between September the 1st and September 22nd, 1962, in any conversation with Coach Bryant did you give that information?

A. No; I did not give him any information at any time [fol. 677] about the University of Georgia's offensive plan.

Q. The last note on that page, reading, "Best since Trippi, Porterfield"; between September 1st and September 22, 1962, did you give that information to Coach Paul Bryant of Alabama?

A. No; n-o. I would like to say that Porterfield or any other sophomore back I have seen in recent years has some

time to spend in developing before he will equal Charlie Trippi.

Q. The next note on top of Page 5, reading, "Bear on a hook on goal line." Did you at any time before September 22, 1962 give that information to Coach Paul Bryant of Alabama?

A. No, sir; I did not; but if Coach Bryant knew that, he would know that every team in America playing the defense—when playing a goal line defense has so small an area that any end or any back, for that matter, has very little room to maneuver. The pass route would have to be very simple against any goal line defensive plan.

Q. I was thinking about the pass pattern that Georgia used against Auburn when it was playing for the championship in 1960. That was on a goal line, was it not?

A. No, sir.

Q. Where was it?

A. It was too far out, about fifteen yards at that stage of the game. I was a little worried.

Q. Well, that was not a hook pass to Herring, was it?

A. All routes are named, Mr. Schroder, for every eligible receiver. The terminology that we used at the time—Bill Herring, playing the left end, in this particular pass pattern did a deep, which in simple language is down and out. [fol. 678] He faked the halfback and went for the flat, the corner of the field.

Q. And that is where Tarkington hit him?

A. That made me a better coach, Mr. Schroder.

Q. Next entry reads, "Slot to right, ends normal (three yards)"; did you at any time before the game in September, 1962, give that information to Coach Bryant of Alabama?

A. No, sir; I did not. In fact, I haven't seen that formation used in years, and I believe the last time we played against the University of Alabama with the University of Georgia, Paul Bryant used it.

Q. What's that, a double slot?

A. A double slot with the ends out, the halfbacks in position to get out and at the same time do a good job of block-

ing. Some people think it is superior in potential to a plain double wing where the ends are in normal position and the halfbacks outside.

Q. The next note or the next entry in the notes, reading, "right halfback, left guard pulling, blocks on corner"; before September 22, 1962, did you give that information to Coach Paul Bryant?

A. I did not, Mr. Schroder. Any left halfback that was given that ball by the quarterback would be unfortunate. They have enough men left for the men to fly to block the defense.

Q. Top of Page 6, entry reading, "Slot or wide slot 'till goal line"; did you at any time before September 22, 1962, give that information to Coach Bryant of Alabama?

A. I did not.

Q. The next entry reads, "Can't quick kick"; did you at any time before the Alabama-Georgia game in 1962, give that information to Coach Paul Bryant?

[fol. 679] A. No. And I'd like to say this, that the quick kicking plan at the University of Georgia at the first glance—if a football coach studied the position of it at first, he would not think it was very good, but I have watched the University of Georgia use it as copied from the University of Texas. It's been very effective, but if I had known that the University of Georgia had a man who played in normal position, left half or right half or fullback, and quick kick, I certainly would not have given it to Paul Bryant, because in my opinion, that definitely affects the play of the safety man in a three-deep defense.

Q. Next entry, "Slot right, right half from fly, screen to him," before the Alabama and Georgia game in 1962, did you give that information to Coach Paul Bryant?

A. I did not, and I would like to say that all screen passes come off of pass protection action. A man who receives a screen must have an inside-out blocking punt. If a man called a screen like this, he would be definitely covered and

it would be a very dangerous plan. I have never seen it used.

Q. Next entry, "29-0 series, Baer catches every game in 1962, did you give that information to Coach Bryant at any time, either in person or by phone?

A. I do not know—no; the answer is "no".

Q. I did not understand.

A. My answer is "No"; I did not give this information.

Q. Oh, yes.

A. But I do not know of any series of that kind. I have never heard of any series called that by any coach.

Q. The entry on the top of the last page reading "slot right, left end out, fifteen yards"; did you give that in-
[fol. 680] formation to Coach Bryant before Georgia played Alabama in 1962?

A. No. I would have to explain, again, as I showed at the blackboard, Coach Bryant showed me the formation and the potential of the formation, and that is the only discussion that I have had about it.

Q. Is that the one that you in turn discussed with the University of Georgia head defensive coach?

A. Yes. I showed him the strength of it running, the strength of it passing.

Q. The next note, "drop end off, contain with tackle"; before the game in 1962, at any time before that game, did you give that information to Coach Bryant?

A. No. And I'd like to explain that. When Coach Bryant returned to Tuscaloosa, Alabama, as the head football coach five seasons ago, six coming up, we played them in Tuscaloosa, and it was just like running signals out in the middle of the field, because he was dropping the ends off. But he would not cooperate with us down near the goal line, and we failed inside the ten yard line at least eight or ten times, we failed to score.

Q. In the conversation—I mean, in the article the Saturday Evening Post indicates that its informer says that you and Coach Bryant, in your alleged telephone conversation, said something about there being a phone call to be made

on Sunday. In any conversation you might have had or that you did have with Coach Bryant before the game or after the game, I will restrict it to before the game, was there any mention about calling back on Sunday?

A. No; to me, no. I have known of Paul Bryant to set up a future telephone call to me.

Q. All right. That completes the notes, but before we pass your copy back to the Clerk's desk, we have been over [fol. 681] those notes in detail, and I want to put this question to you, and I am directing it to each entry individually in those notes. Did you at any time before the University of Georgia met Alabama in Birmingham on September the 22nd, 1962 to play football, did you at any time before that game give Coach Bryant any of the information contained in these seven pages of notes?

A. No; absolutely not. I haven't talked to him about any Georgia football plan at any time since I retired as head coach.

Q. Have you at any time talked to any other coach and given any other coach any information relating to the University of Georgia's football plan before the two schools were to meet?

A. No.

By Mr. Schroder:

Q. Coach Butts, before the University of Georgia played Alabama on September 22, 1962, were you or were you not familiar with the University of Georgia game plan?

A. No. And I would like to enlarge on that. I have never seen a game plan to be used by the University of Georgia since I retired as head football coach.

Q. Before the game in September, 1962, did you or not know what formations the University of Georgia was going to use or planned to use in that game?

A. No. I did not know what formations they planned to use. I know something about almost every formation that has ever been used in football, but—

Q. My question, though, is: Did you know what formations Georgia had planned to use in that game?

[fol. 682] A. No; I did not, and I would like to add to that, I was amazed and surprised that they did not do some other things that they had done well, perhaps the reason being that they always got the ball or almost always got the ball in the Georgia-Alabama game in a very poor field position.

Q. Because of Alabama's kicking game?

A. Alabama always has a great kicking game, and I was proud of the Georgia kicking game. I have never seen better coverage of kicks than Georgia showed in that game.

Q. Before the game in 1962, did you know anything about what plays Georgia planned to use against Alabama?

A. The answer is "no"; I did not know any specific play they would use. I know their outside belly series. I know—I think I know that after thirty-two years as head coach I could take any formation and develop an offense that would cover—hit every hole and take care of every situation.

Q. Did you, before Georgia and Alabama met in 1962, discuss with Paul Bryant anything relating to the way the game was to be played or who was going to do what in the game?

A. The answer is "no"; I had no idea about the game plan or the philosophy to be employed in the game. In other words, football coaches who have coached for a period of time usually develop a football philosophy. They believe in certain phases of the game, and they emphasize the same. I absolutely have no idea at the present time what the Georgia plan is. To be successful in football, one in coaching must establish, first of all, something they can do real well, and then when the defense meets that situation it [fol. 683] gives them the opportunity to put in other plays or other plans.

Q. Who is Wayne Routh?

A. Wayne Routh, the first time I knew him, was connected with Communications International, an advertising

firm, in some capacity. I think I saw him as a financial advisor.

Q. Have you had discussions with Mr. Routh in the offices of Communications International?

A. Yes, sir; Mr. Routh was trying to find the money—

Q. Well, have you had discussions with him?

A. I answer "yes".

Q. During the fall of 1962?

A. Yes, and later.

Q. All right, sir. Now, have you during your tenure as coach or as athletic director at the University of Georgia ever given any coach any information relating to what Georgia planned to do in a forthcoming game against that coach?

A. No. I have talked to a lot of coaches about coaching techniques, coach points.

Q. As related to the plans to be used by Georgia in a forthcoming game?

A. Absolutely no.

Mr. Schroder: Wait a minute. I have got to confer here. Mr. Cody, will you approach the bench with me, please? May we approach the Bench?

The Court: Yes, sir.

(Whereupon a conference was held at the Bench between the Court, Mr. Schroder and Mr. Cody.)

[fol. 684] Cross examination.

By Mr. Cody:

Q. Coach Butts, were you in the courtroom when Mr. J. D. Bolton testified?

A. Yes.

Q. Do you recall the evidence he gave as to the meeting you had in Mr. Cook Barwick's office on February the 22nd when you and certain University officials were present?

A. Yes, sir, I heard what he said, sir.

Q. Is there any error or correction in Mr. Bolton's testimony that you would like to point to?

A. Mr. Cody, I am not sure that I am qualified to correct Mr. Bolton. I would like to say, however, that in my opinion he, not deliberately I am sure, but he said something that I do not agree with, that being—should I tell you?

Q. Go ahead.

A. —that being when after the notes had been handed to me in Mr. Cook Barwick's office, he said that he quoted me as saying that the information in those notes was basically true. I have never said that. I said such a telephone call might have been overheard. I did not say—I did not evaluate the notes.

Q. Do you recall he asked you to sign an affidavit on that occasion?

A. You are referring to Mr. Cook Barwick?

Q. Anybody in that meeting.

A. Mr. Cook Barwick never, never asked me to sign an affidavit.

Q. Well, who did?

A. Not anyone in the room asked me to sign an affidavit. [fol. 685] They asked me to do something else.

Q. Was that take a lie detector test?

A. That is true, sir.

Q. And is it your evidence now, under oath, that no one in that meeting asked you to sign an affidavit?

A. Not to my knowledge.

Q. But you did hear Mr. Bolton testify to the fact that that request was made, and you take issue with him on that statement?

A. I do, sir. According to my knowledge I would like to—I would like to ask for permission to explain.

The Court: Yes, sir; you explain any answer you want to.

A. (By the witness) There was a little bit of pressure on me, Mr. Cody, when I walked in to that arrangement. I didn't know what they had—what the meeting was all about.

Q. You were among friends, though, weren't you?

The Court: Just—all right.

The Marshal: Let's have order, please.

A. (By the witness) You want me to answer that?

Q. Haven't you known Mr. Bolton and those University officials for many years?

A. Yes, sir; yes, sir.

Q. Coach Butts, hasn't the University of Georgia been pretty good to you over the years?

A. Yes, sir; they have given me a wonderful opportunity, and I appreciate it very much, and I might add, I will [fol. 686] always be loyal to the University of Georgia, regardless.

Q. Was it the next day that you resigned as athletic director?

A. Yes, sir.

Q. Do you recall Mr. Bolton's testimony to the effect that you resigned in January previous to this particular resignation?

A. I recall that, Mr. Cody, but I would like to say the only official resignation, which is what I thought you were referring to, came Saturday following meeting in Mr. Cook Barwick's office.

Q. That would be February 23rd?

A. I will take your word for it, sir.

Q. Thank you. Now, what—why did you resign back in January?

A. I—I went to Dr. O. C. Aderhold, President of the University of Georgia, and told him that I would like to be retired as athletic director in June, I wanted to do some other things and get out of the job as athletic director.

Q. Well, now, tell us what the other things, Coach, are. That is important in connection with this case. What business were you going into?

A. Sir, it was my plan at the time to hold the interests I had, not particularly to enter into them. For example, I owned stock in a corporation known as Instant Loan Company. I have never had anything to do with operating that company, but I had planned to back them to great extent.

What I expected to and planned to do was to get a connection with a professional football team.

Q. Let's back up to the Instant Loan Company, now, just a minute. Who was it you went in business with in that company?

[fol. 687] A. Mr. Cody, originally I went into the business with Frank Childs of Gray, Georgia and Carl Westmoreland of Macon, Georgia.

Q. Was that a partnership?

A. It was—I heard that it was a partnership, but it was incorporated from the beginning, that is, in my opinion at this time.

Q. Isn't it true, though, Coach Butts, that when the Instant Loan Company was started, you and Frank Childs were partners?

A. We collaborated in the planning to get the loan licenses, but when the business started operating, Mr. Cody, Mr. Westmoreland was in it with one-third interest and it was a corporation. To my knowledge there's never been a partnership. Frankly, I don't know too much about the difference. But officially, when Instant Loan Company was started, it was a corporation, and I have named to you the owners of the stock, one-third interest each.

Q. It started out as a corporation?

A. Yes, sir.

Q. And that—and that company operated in various cities over the State of Georgia?

A. Yes, sir. The home office is in Macon, Georgia. We have an office in Blackshear, Georgia; Ocilla, Georgia; Dawson, Forest Park, and Jonesboro.

Mr. Schroder: If the Court please, could I inquire as to the relevancy of all this testimony?

The Court: What is your—

[fol. 688] Mr. Cody: I want to show, Your Honor, that he was devoting his entire time practically to outside interests other than athletic director, and that is the reason—that is the reason he resigned.

Mr. Schroder: I think he ought to just ask him that, about—

Mr. Cody: That is what we are talking about.

Mr. Schroder: Whether it was a partnership, a corporation, where they had offices, who the people were; just ask him what part he devoted to athletic director.

The Court: I will let you continue the line within limits.

By Mr. Cody:

Q. You didn't name Blackshear.

The Court: Yes, sir; he named Blackshear.

The Witness: Yes, sir; I meant to.

The Court: He named Blackshear.

By Mr. Cody:

Q. How about Conyers?

[fol. 689] A. I don't have one at Conyers, but it is a good place, though.

Q. Ocilla?

A. A license was issued for Ocilla, Mr. Cody, but it was exchanged for another location; I believe, Jonesboro.

Mr. Cody: Will you identify this, please?

The Clerk: Yes, sir.

Mr. Cody: That may have been identified once before.

The Clerk: It doesn't have a number—yes, it is; Defendant's Exhibit No. 10. It's been marked.

By Mr. Cody:

Q. Coach Butts, I show you what has been identified as Defendant's Exhibit No. 10.

Mr. Schroder: May I look at it, Mr. Cody? I don't believe I have ever seen it. I don't know what you are talking about.

By Mr. Cody:

Q. Do you know what that is?

A. Yes, sir.

Q. Did you—will you look on there and tell who—whether or not that is the business that we are taken about the Instant Loan Company?

A. Yes, sir; it is.

[fol. 690] Q. Does it show what type of business it is, that is, whether it is a corporation or partnership?

A. I don't know. You will have to show me. I am not very wise in business transactions. I can give evidence to that effect.

Q. You see question number 6 that you and Frank Childs are named as partners?

The Court: What is the purpose of this?

The Witness: Mr. Cody—

The Court: What is the purpose in whether it is a partnership or—of course, I don't know what your—

Mr. Cody: Your Honor, there will be some evidence about Mr. Childs.

The Witness: Mr. Cody, will you please consider the answer I gave you. When these licenses were issued, I am not sure, but when the business started operating Mr. Carl Westmoreland was a third owner in a corporation which was formed in Macon, Georgia, Bibb County.

By Mr. Cody:

Q. Do you know if, Coach Butts, if your resignation in January of 1963, that the acceptance of it was held up because of all these business interests that the University—

[fol. 691] Mr. Lockerman: Your Honor, I don't think that is a proper question at all, does he know whether or not he was held up because of that.

The Court: What would be the relevancy, even if it was?

Mr. Lockerman: Yes; that is a further objection.

Mr. Cody: I withdraw it.

The Court: All right, sir.

By Mr. Cody:

Q. It is your testimony now that effective February 28, that is, the resignation you made on February 23rd, effective February 28; that following that date, February 28, you were neither coach nor athletic director at the University?

A. That is true, sir.

Q. Coach Butts, do you remember giving your deposition in Mr. Schroder's office prior to the trial of this case?

A. Yes, sir.

Q. That was on May the 3rd?

A. Well, I—I'll take your word for that, sir.

Mr. Schroder: If the Court please, and while counsel was looking there, the witness has testified he did resign, but I don't believe he testified why he resigned on February 23.

[fol. 692] The Court: Well, you can bring that back out on redirect-examination; I will permit you to do so. All right, sir, go ahead with the Coach.

By Mr. Cody:

Q. Coach Butts, do you recall a statement that you made over television on March the 29th, 1963, as follows:

"Gentlemen, I came over here today to see the Attorney General of the State of Georgia, Mr. Gene Cook. My express purpose was to check with him things that I had read in the papers and heard on T. V., that in some respects might imply that I had at some time or another been connected with gambling interests. I assured Mr. Cook that I never had been interested in gambling. I have never been interested in associating with people that were known gamblers, and that I would like to repeat what I have said many times before. My greatest love of all and interest is in the University of Georgia, and I would never at any time and never have done anything that would injure the University of Georgia, and that is all I have to say."

Did you make that statement?

A. Mr. Cody, I have heard so many statements, and been around you lawyers so much, might be a few words out of line there, but I made a statement to that effect. I would like to say that as far as my services at the University of Georgia are concerned, that represents only my opinion.

Mr. Schroder: If the Court please, this is about the second or third time that reference has been made in this [fol. 693] trial to the Attorney General. Now, I think that the Jury ought to be instructed that whatever happened at the Attorney General's Office, or before the Attorney General, doesn't have any bearing whatever on the issue being tried here today and cannot influence their deliberations in any way. That's been referred to yesterday in a statement, referred to again in this—in the testimony today.

Mr. Cody: We are not getting in to the results of that.

Mr. Schroder: I believe the Jury would be—ever the results of any other body might have been is not—should have no sway or bearing on your determination of the issue in this case.

By Mr. Cody:

Q. Coach Butts, you refreshed your recollection earlier in the morning about some telephone calls that Mr. Schroder asked you about. Will you take a look at that document, which is—which has been identified as Defendant's Exhibit No. 17.

Mr. Schroder: May Mr. Cody and I approach the Bench, Your Honor?

The Court: Yes, sir.

(Whereupon there was a conference at the Bench between The Court, Mr. Cody, and Mr. Schroder.)

[fol. 694] The Court: All right, sir.

By Mr. Cody:

Q. Now, you may refresh your recollection at any point in this testimony that you wish, Coach Butts, so I am going to ask you, first, to turn to such part of that list as discloses some calls in September of 1962, and ask you if it doesn't disclose—

A. Wait a minute, please, sir. May I ask a question, sir? Do they start on Page 22?

Q. They are in several different places, but I don't think you will have any trouble locating them.

A. What do you want me to do, sir?

Q. I want to ask you if that document refreshes your recollection with respect to ten or eleven calls that you made to a man named Frank Scoby, in Chicago. This is in September, 1962.

A. Without looking at the document, Mr. Cody, I will say that I have called him at least eleven times.

Q. During September?

A. Yes, sir.

Q. Do you recall particularly calling him on September 21, 1962 on two separate calls?

A. No; I do not, sir.

Q. That would have been the day before the Georgia-Alabama game?

A. Yes, sir.

Q. Do you recall—can you refresh your recollection from that document and tell me whether or not you called him on September 22, which was the day of the game?

A. I would not have remembered it exactly, sir, except that the gentleman that I called Mr. Scoby for read this in a newspaper and told me about it, said this call was made [fol. 695] to Mr. Scoby on the day of the Georgia-Alabama game for Mr. Joe Sargent, Lakeland, Florida, and I simply put him on the phone, and he talked to him.

Q. Did you know Mr. Frank Scoby was a pretty big gambler?

A. I did not.

Q. Have you found out since?

A. Well, they said you couldn't mention the Eugene Cook investigation; is that right? That's the first time I knew about it, sir.

Mr. Schroder: I understood the question was that he was not his—what is the question?

The Court: I believe he asked Coach Butts did he know that Frank Scoby was—

Mr. Schroder: Was—

The Court: —was a big gambler.

By Mr. Cody:

Q. How long have you known Frank Scoby?

A. I have known of him since, perhaps the early '40s. I met him following the 1946 football season in the summer of '47, when I was a member of the College All-Star coaching staff in Chicago. I met—

Q. Have you—

[fol. 696] Mr. Schroder: Let him finish.

Q. Go ahead.

A. I met him through Coach Frank Leyhe, then the coach of Notre Dame.

Q. Have you known him closely since then?

A. He is a real good friend.

Q. Has he visited you in Athens?

A. No, sir.

Q. Have you seen him in Atlanta?

A. I recall seeing him twice in Atlanta; once when he came to the Georgia versus Georgia Tech game played in Atlanta in 1959, and I believe he has been in Atlanta at least once, or maybe twice on business.

Q. Have you ever seen him in Athens?

A. I have never seen him in Athens.

Q. On how many occasions have you met him in Chicago?

A. Many times; he's a good friend of mine.

Q. Have you met him in New York on a number of occasions?

A. On several occasions. Mr. Scoby not only was a distributor for the Miller High Life distributorship in Chicago, but he is the distributor of Miller High Life in New York City.

Q. When you visited him in New York City, were you up there at his invitation?

A. The answer is "No".

Q. Did he pay your expenses?

Mr. Lockerman: I think he wanted to explain something, Mr. Cody.

[fol. 697] By Mr. Cody:

Q. Go ahead.

A. Mr. Scoby has never paid my expenses to New York City.

Q. Has he paid them while you were there?

A. Yes; and I would like to explain, and I am not trying to—

The Court: You go ahead and explain.

A. —be funny at all, but Mr. Scoby is what people call a check-grabber, and with my financial setup, sometimes I have a hard time getting my hand out of my pocket.

Q. Did he arrange a loan for you in Chicago?

A. Yes, sir.

Q. Did he endorse your note?

Mr. Schroder: Please—let the witness be instructed he's got the right to explain any answer.

The Court: Yes, sir; yes, sir.

By Mr. Cody:

Q. Go ahead.

A. Yes, Mr. Cody.

The Court: Any answer, Coach Butts, that you want to explain, you just say "I want to explain it", and then go ahead and explain it.

[fol. 698] The Witness: Thank you, Your Honor. You will understand, this is the first trial I have ever seen, much less been in. Would you please ask your question, sir?

The Court: He asked the question, did you borrow some money from Mr. Scoby.

By the Witness:

A. The answer is, I did not borrow money from Mr. Scoby, but through Mr. Scoby's influence at the Exchange National Bank in Chicago with a gentleman named Ralph Miller handling the negotiations I borrowed six thousand dollars, and at the present time I owe fifteen hundred dollars on it.

Q. When was that loan made?

A. I do not know, sir.

Q. Were you in Chicago when the deposition of Mr. Scoby was taken?

A. Yes, sir.

Q. Did you see him on that occasion?

A. I saw him for lunch, sir.

Q. Are you familiar with his testimony as to the number of telephone calls that he has made to you?

A. I have never seen that information; I have never been interested in it.

Q. Have you ever been off on any trips down into Florida with Mr. Scoby?

A. I think I have one time, sir.

Q. Where was that?

A. Miami, Florida.

Q. Have you entered into any business negotiations with Mr. Scoby?

A. I have never been in business with Mr. Scoby. Mr. Scoby has tried to help me with several projections I hoped to put over.

[fol. 699] Q. What's that?

A. I requested that he help me find money, if he could, for the loan companies, the reason being a loan company can afford to pay eight per cent for such loans, such mon-

ies. He also, when I was in the Orange River Groves, Inc., a corporation, he checked it out, thinking maybe it might be a good investment. His decision was that it was not a good investment.

Q. Well, it didn't take him long to decide that, did it?

A. No, sir.

Q. As a matter of fact, you have lost a lot of money in that business, haven't you?

Q. Go ahead and answer it any way you want.

A. The amount of money that I will eventually lose in Orange River Groves, Incorporated, which still is operating, will depend on the honesty of two individuals that owe me some money in connection with that deal.

Q. Are you active now in the operation of that business?

A. No, sir.

Q. Well, now, are there any other areas in which you have been negotiating with Mr. Scoby, any business negotiations in connection with any particular business?

A. I—there is a concentrate plant at Lakeland, Florida, called Universal Foods, Incorporated. They were looking for some money because they wanted—they were underfinanced. I don't think Mr. Scoby ever took any particular interest in it.

Q. Is there any other business that you haven't mentioned that you have been discussing with Mr. Scoby that you both might be interested in?

[fol. 700] A. Mr. Cody, at one time when I was thinking about retiring from the University of Georgia as the athletic director, Mr. Scoby mentioned to me that he was introducing a new scotch whiskey into the country. I think the name of it was "James Douglas". He mentioned the fact that if I got a connection with a professional football team he might be able to work out something where I could get an override on all of the products sold in the South.

Q. For that particular brand of scotch whiskey?

A. Which he is planning to introduce into the country.

Q. What is the status of that negotiation now?

A. Mr. Cody, since the Saturday Evening Post story, I haven't had too many people talk to me about jobs.

Q. We are talking about Scooby now.

A. All right, sir.

He hasn't mentioned and I have not mentioned it sir.

Q. Could you refresh your recollection, Coach Butts—you can use that memorandum that you had a moment ago—and tell me about how many telephone calls you have exchanged with Mr. Frank Childs down at Gray, Georgia?

A. No, sir. If you will pardon me, I don't think that is necessary. I am willing to admit that I have had many calls from him and to him.

Q. Would it be several hundred?

Q. Have you ever been off on any trips with Mr. Childs?

A. Yes, sir.

Q. Approximately how many?

[fol. 701] The Court: You going to connect all this up, Mr. Cody?

Mr. Cody: Yes, sir.

A. (By the witness) One time I went to New York with him to see a World Series game, and I have been several times to Miami with him in regard to the Orange Grove—Orange River Groves, Incorporated, business.

Q. Did you know that Mr. Frank Childs owned a part interest in a gambling casino?

A. Absolutely not.

Q. Do you know now whether he—

A. I have never known of Mr. Childs having any interest in any gambling casino.

Mr. Cody: I want the deposition—I think I have got a copy here.

Mr. Schroder: If the Court please, I do anticipate counsel being able to prove what he is stating there as a matter of fact, that is, as to who or who is not a gambler, and who or who is not an owner of a casino. I mean, I am not—I don't know anything about it, but counsel is stating that as a fact, did he know that Mr. Childs was half-owner of a casino, and I think—I am just assuming he is going to be able to establish it. The witness said he didn't know.

The Court: I have to let him prove his case it is not objectionable, and you can come back and clear it up on direct.

Mr. Schroder: That is not my point. My point is, even on cross-examination, Mr. Cody can't state something for a fact something that has not been introduced in evidence.

The Court: I overrule the objection.

Mr. Schroder: All right.

By Mr. Cody:

Q. You say you remember the deposition which you gave before a court reporter on May 3rd, 1963 in Mr. Schroder's office?

A. Yes, sir.

Q. Do you remember this question and this answer: "Did you ever know that Frank Childs had a part interest in a gambling casino down near Gray, Georgia?" Answer: "No, sir; I read about it." Is that correct?

A. Mr. Cody—

Q. Just answer my question, and I will let you explain it later.

A. Okay.

Q. I want to ask you several questions and you make whatever explanation you want to.

A. My explanation for that is that I read about a raid on a gambling casino in the county in which Gray—I believe it's Greene County, but I did not read about Mr. Childs being connected with it in any way, but I do know, as a [fol. 703] matter of fact, that they had Mr. Childs up before a Grand Jury later in regard to the case but that does not prove to me that he was a part owner of a gambling casino.

Q. Well, Coach Butts, let's get back to the questions and the answers I put to you on Page 41 of your deposition given on the date which I mentioned. I want to ask you to state whether or not his question and this answer is correct that you gave on that occasion. I have several to ask you about. "Did you ever know that Frank Childs had a part interest in a gambling casino down near Gray, Georgia?"

A. No.

Q. Your answer was, "No, sir; I read about it." Is that a correct statement of the question and answer?

Mr. Schroder: I think he has explained that, Your Honor.

By Mr. Cody:

Q. Let's pass on to the next one, then. When was it—is this question correct that was submitted to you on that occasion: "When was it you read about—"

Mr. Schroder: I think it is not a question of whether the question is correct, but the answer.

Mr. Cody: It's both.

The Court; I think it is a proper way. Mr. Cody can ask Coach Butts on such and such a day, when you took his [fol. 704] deposition in Mr. Schroder's office, "did I ask you this question and did you answer accordingly, 1, 2, 3," whatever the questions were, and then at that conclusion Coach Butts should be permitted to explain why he answered that question in those depositions that way on that particular day. Do we understand each other?

Mr. Cody: I think, sir.

Mr. Lockerman: Your Honor, wouldn't that be for the purpose of showing some contradictory statements, and there is no contradiction here.

The Court: I don't know whether there is or not. I don't know what Mr. Frank Childs or Mr. Scoby, I mean, I don't know what the nature of this testimony is, and if you recall I previously asked Mr. Cody was he going to be able to connect it up. Otherwise, I don't think it is admissible. But go ahead.

By Mr. Cody:

Q. Reading further, and I will just read two or three questions and two or three answers, and you make whatever explanation you want. I am trying to establish, Coach Butts, that these questions and answers were submitted to you on that occasion. "When was it you read about it?"

Answer: "I read about it in one of the Macon papers. I don't know when." Let me finish.

[fol. 705] The Court: Yes, sir; go ahead.

By Mr. Cody:

Q. "Could you say approximately when?" Answer: "No, sir; I would not attempt to do that." Question: "Would it be in the year of 1963?" Answer: "I read about it, and I will not try to remember the date." Question: "Could it have been in the year 1962?" Answer: "I don't know. You have got me on that one." Do you recall now whether or not that is a correct transcript of what you said?

A. That is exactly right. May I explain?

Q. Yes, sir.

The Court: Go ahead and explain.

A. (By the witness) When you refer to "it", I was referring to an article about a raid on some kind of a gambling establishment near Gray, Georgia. That still does not mean to me that I at any time thought that Mr. Frank Childs, or that I knew or even thought that he had anything to do with it.

Q. All right, sir; very well. Do you recall in that deposition that I asked you this series of questions and you gave the answers: "Coach, did you resign as athletic director?" Answer: "Yes; I resigned as athletic director." Question: "Effective when?" Answer: "Effective at the end of March." Do you recall giving those answers?

A. The answer is "yes", but I will tell you this, and you know it, at the next deposition I corrected that; I phoned my attorneys right after I thought about it. I got the months mixed up, and I resigned effective at the end of February, and, Mr. Cody, you know that, and you know [fol. 706] that I corrected it.

Q. But it was in—

Mr. Schroder: I might say that is absolutely correct and I think it is unfair.

The Court: Well, let's don't have comments there. I think you can clarify all this by direct examination. I will certainly let Coach Butts explain it as he goes along.

The Witness: Your Honor, sir, though, I don't want it implied that I lied deliberately in a deposition.

By Mr. Cody:

Q. You know, of course, that—

Mr. Schroder: Wait, I didn't hear that?

By Mr. Cody:

Q. —the date does have some bearing in this case?

A. State that again.

Mr. Schroder: What's that?

The Witness: I didn't understand that.

Mr. Cody: I will withdraw the question.

[fol. 707] The Witness: To answer that—

Mr. Schroder: Wait a minute; wait a minute. The question has been withdrawn.

The Witness: I'm sorry.

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LEROY JORDAN called as a witness on behalf of the Plaintiff, after having first been duly sworn, testified as follows:

. Direct examination.

By Mr. Schroder:

Q. State your full name for the records, please, sir?

A. LeRoy Jordan.

Q. Where is your home, Mr. Jordan?

A. Excel, Alabama.

Q. Is that E-x-c-e-l?

A. Yes, sir.

Q. Excel, Alabama?

A. That's correct.

Q. What is your present occupation?

A. I am employed by the Dallas Cowboys, professional football.

Q. Speak up, please, sir, where we can hear you.

A. Dallas Cowboys, professional football.

Q. Where did you attend high school, Mr. Jordan?

[fol. 708] A. At Excel High School.

Q. Did you or not play football at Excel High School?

A. Yes, sir, four years.

Q. From Excel High School where did you then take up your education?

A. The University of Alabama.

Q. What year did you enter the University of Alabama?

A. In '59.

Q. How old are you, Mr. Jordan?

A. Twenty-two.

Q. At the University of Alabama, did you also or not participate in football?

A. Yes, sir.

Q. How many years?

A. Freshman year and three varsity years.

Q. During the season of 1962, you completed your eligibility at the University of Alabama?

A. Yes, sir.

Q. In order to familiarize the Court and Jury with your accomplishments, could you tell us what honors, if any, you received in football at the University of Alabama in your senior year?

A. I was selected on some All-American teams.

Q. Some?

A. Yes, sir.

Q. Don't be modest.

A. Well, I was selected on some All-American teams, and I was chosen as lineman of the year by the Ohio Quarterback Club and SEC; I was on the SEC team.

Q. Who was captain of the Alabama football team?

A. I was captain.

Q. During the summer, this past summer, 1963, Mr. Jordan, did you play in any All-Star games?

A. Yes, sir; I played in two of them.

[fol. 709] Q. Were these college All-Star games?

A. Yes, sir.

Q. Name the two of them, please, sir?

A. One was the East-West All-Star game in Buffalo.

Q. Now, what personnel were playing on those two teams?

A. Well, it was East-West All-Stars, I mean, college All-Stars.

Q. College?

A. Yes, sir.

Q. Were you or not a part of the East All-Stars?

A. Yes; I was.

Q. Did you play any other all-star game during this past summer?

A. Yes, sir; I played in the All-Star game against the Green Bay Packers August 2nd.

Q. Was that game in Chicago?

A. Yes, sir.

Q. Were you or not co-captain of the college All-Stars in that game?

A. Yes, sir; I was.

Q. How did you all come out with the Green Bay Packers?

A. We won 20 to 17.

Q. Mr. Jordan, how long have you known Wallace Butts?

A. Well, I have been knowing him in football since my freshman year.

Q. Speak up, please.

A. Knowing him in football since my freshman year.

Q. At Alabama?

A. Yes, sir; at Alabama.

Q. Have you ever met or talked with him?

A. Well, I saw him last night for the first time and was introduced.

[fol. 710] Q. Last night is the first time you have ever been introduced to him?

A. Yes, sir.

Q. How long have you known Paul Bryant?

A. Well, since I came to the University my senior year in high school and met him there.

Q. You are here today, having traveled from where?

A. Los Angeles.

Q. And when did you arrive?

A. Last night.

Q. Your plans call for you to return to Los Angeles when?

A. Tonight.

Q. During the fall practice at Tuscaloosa prior to the game between the University of Georgia and Alabama, what particular offensive formations, if any, was the Alabama team coached to expect?

A. Well, I think it was four formations that Georgia has used in the previous years that we had played them and we had seen films. They were slot formations and an unbalanced line formation, and a regular "T" formation, and slot with motion formation.

Q. Were those or not the four formations that you were coached or the team was coached to expect the University of Georgia to specialize in?

A. Yes, sir.

Q. What special defense or what defense, if any, was the Alabama team put in, so to speak, that might be different from their regular defenses in order to make preparations for that game?

A. Well, we had put in what we call a rover defense which we had used before, and the only difference was we had moved me to the side away from the formation where we thought I'd go in on more plays that way.

Q. You were playing in what position as defender?

[fol. 711] A. I was linebacker, and was playing guard sometimes, and we had a defense we called a 'Bama defense. It was the same thing; only we would move the tackle in and I move outside further.

Q. Do you understand the formation—I may not describe it in the parlance that you might use—known as the pro-

seat, or let me more or less try it this way. Does the regular slot formation with the weak end out, the end away from the slot out fifteen yards, mean anything to you?

A. Yes, sir; that is our formation we run.

Q. Was that formation employed by the University of Georgia against the University of Alabama in Birmingham on September 22, 1962?

A. Yes, sir; it was.

Q. What effect, if any, upon the defenses that Alabama had prepared did the use of Georgia of that formation have?

A. Well, the defenses we had prepared when they went into this formation, it took me completely out of where the action would be, the running plays, because the way we had to adjust for the split end was I would have to move completely out on him, and therefore trying to play for the pass, and it took me out of their running game or any plays that I usually play, because I play that better than I do the pass.

Q. Was it or not to you a surprise when the University of Georgia went into the formation, regular slot with the left end out fifteen yards?

A. Yes, sir; it was.

Q. What success, if any, did the University of Georgia have with that formation before Alabama adjusted its defenses, if Alabama did adjust its defenses?

A. Well, we had some good success. I think they had a penalty one time. It brought back a real good game that they had against us, and again they completed a couple of [fol. 712] passes: I know one of them was better than ten or twelve yards or more, and they ran that, I think, I don't know how many times they ran the first half, but they used that with their regular slot formation.

Q. During the halftime when the players went to their respective—excuse me—dressing rooms, was there or not any adjustment made in the Alabama defenses against that formation known as the regular slot with the weak end out fifteen yards?

A. Yes, sir. We used a type—a split six defense, we called it. It is a six-man line with the two linebackers more or less in the middle, and therefore we could adjust with our ends going out to the split end, and it would not take our linebackers out of place.

Q. The effect of the adjustment then was to bring you where, or to put you where?

A. Back in the middle of the formation.

Q. And instead of having you out defending or—defending against or guarding the split end, who, during the second half, was assigned to that function?

A. Well, it was the end to the way he was split, I mean, if he was split left, it would be the end to his side that would be covering.

Q. In your opinion, or do you have any opinion, as to the reasons for the thirty to nothing score of the Alabama-Georgia game?

A. Well, yes, sir. I think our passing game was a success. I mean we didn't know how good our quarterback was, and I don't think Georgia did either.

Q. The passes that were thrown in that game by Alabama were thrown in what area of the football field?

A. You mean where we were located on the field when we started out?

[fol. 713] Q. No, sir. Were they thrown side line passes or down-the-center passes—

A. Well, as I remember—

Q. —over the flat, I mean, rather than sidelines; excuse me.

A. As I remember, our first touchdown came on long pass down the side line and our end ran a pass down the side line, and it was completed for a touchdown.

Q. In your opinion, having played the game of football as long as you have testified you have played, in preparing to play a given game, would it mean anything to you as the coach to know what formations were going to be employed by the offensive team?

A. No, sir; I don't think so; because we always have the films, and we always see what every person does, I mean, all the formations used in the past.

Q. What is the type of information which the coach of the defensive team wants to know from scouting reports, from films, from watching the team he is going to play in previous games, what is it he is looking for primarily?

A. When he is going to run a play.

Q. Looking for what, sir?

A. Well, say the tendencies of a team on third down they are going to run so-and-so. They run it in every film we see. That is the only thing a defensive coach, I think, really looks for and works toward, is finding the trend of a team, and then you more or less have to go with what they have been doing.

Q. Is what you are saying that what the defensive coach wants to know is when the team he is going to play uses a particular play for formation?

A. That's right.

[fol. 714] Q. And that is established by the defensive coach from what information?

A. From scouting reports and films, breakdown of films.

Q. What was your weight when you started the Alabama-Georgia game that night?

Mr. Cody: Your Honor, I don't see what that's got to do with it.

The Court: No, sir; that is getting far afield. Let's get down to the issues. I sustain the objection to the question.

Mr. Schroder: Hand the witness the notes, please.

The Clerk: I will have to get it.

Mr. Schroder: I can use these copies; that's all right.

By Mr. Schroder:

Q. Mr. Jordan, have you reviewed before now the so-called Burnett notes?

A. Yes, sir; I have seen quite a bit in the paper.

Mr. Cody: May I see what you are showing him?

Mr. Schroder: I am showing him a copy of them, because we do not have the originals. The Clerk has gone to get them.

[fol. 715] Mr. Cody: Do you mind using a copy without your memo on it? I think it would be better, because it might suggest things to the witness, Your Honor.

The Court: Yes, sir. Where are the originals?

Mr. Schroder: The Clerk went to get them.

Mr. Cody: I see voluminous notes on them somebody has made.

The Court: I sustain your objection; I sustain your objection. Could you go on with him until the Clerk returns with the original notes?

By Mr. Schroder:

Q. Have you reviewed the notes which I have shown you here or other copies that you saw? I haven't gone over these notes with you, have I?

A. No, sir.

Q. All right, sir. Will you take a few minutes and thumb through those notes, and I believe I can save time in going over them note by note. Now, Mr. Witness, you have reviewed the original to the document to which I—or documents to which I have just referred?

A. Yes, sir.

Q. Will you please state to the Court and Jury whether there is anything in those notes which the University of [fol. 716] Alabama specialized in before its game with the University of Georgia in defending?

A. No; there is nothing there.

Q. Is there or not anything in those notes other than the names of players that would remind you of the University of Alabama?

A. Well, it only has "slot"; it has "slot" in here several times, and that is what we used, and everybody else, I guess.

Q. What sort of a slot does Alabama use?

A. Well, we use a slot with the end out on the other side.

Q. That is the pro formation we are talking about?

A. Yes, sir.

Q. How about your regular slot or your normal slot?

A. We use the normal slot with the end in tight.

Q. During the week of the game that was played on September 22, were there any changes in the defenses which the coaching staff at the University of Alabama had prepared for the Georgia game?

A. No, sir.

Q. During the week preceding or during which the game in Birmingham was to play against the University of Georgia, were any of the names that you see on those notes emphasized with respect to Alabama defensive.

A. No, sir; no more than we emphasize anybody else on the team.

Q. In your opinion, as a football player during the years—I mean, during the years that you have played, is there any way in which the outcome of a football game can be rigged or fixed without participation of the football players themselves in it?

A. No, sir. It couldn't be done.

[fol. 717] Q. In your opinion, is there any way that two coaches could rig or fix the outcome of a football game without the players' knowledge?

A. No, sir.

Mr. Schroder: Just a moment, Your Honor, let me confer. That's all, your Honor.

Cross examination.

By Mr. Cody:

Q. Mr. Jordan, are you familiar with the statistics of this game?

A. No, sir; I am not; I don't remember them.

Q. If the statistics should show that Georgia gained only thirty-seven yards on the ground, that is, running with the ball, would you, as an expert, say that that indicated any surprise to Alabama?

A. Well, it surprised us on the part that they didn't make good against the first of the ball game until we adjusted.

Q. If the total gains were thirty-seven yards, the surprise would be that they didn't gain, wouldn't it?

A. Well, I believe that their gains were of somewhat a passing nature the first of the game.

The Court: That was thirty-seven yards total offense?

Mr. Cody: Total offense on the ground. That is not the—not the—

[fol. 718] Mr. Schroder: There is a difference in total offense and total offense on the ground.

The Court: Offense on the ground; that is what I was asking.

By Mr. Cody:

Q. Do you know what the statistics show as to the gains made by Georgia on passes?

A. No, sir; I don't.

Q. I see. Do you know—do you know the personnel, entire personnel of the Alabama coaching staff now?

A. Yes, sir; I think so.

Q. Could you name those for us? I'd like to get it in the record in this case.

A. Well—

Q. If you don't want to trust your memory—

A. As it stands now?

Q. —you might want to use this. Read those names. Start with Coach Bryant's. I just want to get those names in the record.

A. Head coach, Paul Bryant.

Q. Speak out loud where we can hear you.

A. Paul Bryant, Pat James, Sam Bailey, Carney "Dude" Hennessey, Jim Blevens, Ken Myer, Clem Grisco, D. Powell, Jimmy Sharp, Charles Pell.

Q. Last two are Sharp and Pell?

A. They were guard and tackle on our 1962 team.

Mr. Cody: You can come down.

[fol. 719] Mr. Schroder: Just a minute.

The Court: Just a moment. I think Mr. Schroder wanted to ask you some more questions.

Mr. Schroder: If the Court please, there was a question I overlooked on direct.

The Court: All right, sir, go ahead, sir.

Redirect examination.

By Mr. Schroder:

Q. Mr. Jordan, it is stated in the Saturday Evening Post article published March 23rd, 1963, that the University of Georgia football players were complaining or stating that it looked like the Alabama team knew their plays. Let me ask you in connection with that, when a team is losing and the players are not carrying out their assignments, is that or not a common thing in football?

A. Yes, sir; that is real common. I know we had several in the Georgia Tech game last year.

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CHARLES LOUIS TRIPPI called as a witness by the Plaintiff, after having first been duly sworn, testified as follows:

[fol. 720] Direct examination.

By Mr. Schroder:

Q. For the record, will you please state your full name.

A. Charles Louis Trippi.

Q. Where is your home?

A. Athens, Georgia.

Q. Where did you receive your education, Mr. Trippi?

A. At the University of Georgia.

Q. What year did you finish at the University of Georgia?

A. 1947.

Q. While at the University of Georgia did you play football?

A. I hope I did; yes, sir.

Q. Since your—did you receive any honors upon your graduation from the University of Georgia, in football?

A. That, I did.

Q. Would you, without being too modest, explain or describe for the Jury that, in order to prove your qualifications?

A. Well, I received several honors, I guess. I was an All-American, I guess, in 1946; made All-Southeastern Conference '45-'46 received the Maxwell Award in, I believe it was in Philadelphia, and I received an award in Washington as the Outstanding Ball Player in the country that year; and a few other things I don't believe it's important to mention.

Q. All right, sir. Upon your graduation from the University of Georgia, did you continue your football playing?

[fol. 721] A. Yes, sir; I played for nine years with the Chicago Cardinals.

Q. During that nine-year period, did you receive any distinctions as a football player?

A. That, I did.

Q. Just name a few of them for me.

A. Well, I was selected to the All-Pro team my first two years with the Cardinals.

Q. Now, in 19—did you subsequently—did you ultimately retire as a player in pro football?

A. Yes, sir; I retired in the year 1955, and the following year I was an assistant coach with the same organization for two years.

Q. Did you subsequently return to the University of Georgia?

A. That, I did. I returned in the year '59, and worked there until recently, when I accepted a new position with the St. Louis Football—St. Louis Cardinals.

Q. Well, the St. Louis Cardinals is the same organization that you have the franchise with?

A. Yes, it is; formerly the Chicago Cardinals.

Q. And you are now employed in a coaching capacity?

A. Yes, I am; I am offensive backfield coach with the St. Louis Cardinals football team.

Q. Mr. Trippi, you were on the coaching staff at the University of Georgia during the football year of 1962?

A. Yes; I was.

Q. In what capacity?

A. As offensive backfield coach in charge of offensive planning.

Q. In 1961 were you also with Georgia in the same capacity?

[fol. 722] A. Yes, I was.

Q. During the Alabama-Georgia game in 1962, did you attend the game?

A. Yes, I did.

Q. What was your function, if any, during the game?

A. Of course, I was in charge of offensive operation. I sat in the press box and called the action from there; whatever was necessary to be done offensively.

Q. What are the mechanics in calling whatever needs to be done offensively from the press box?

A. Well, many things determine what you do up there. Of course, position, field position determines a great deal; the hash mark; and the score.

Q. How do you get that information relayed to the football team?

A. How do I get it relayed to them?

Q. Yes, sir.

A. I phone it down on the field, and in turn they send it in to the quarterback.

Q. In the Alabama-Georgia game that we are discussing, about how many plays did you call offensively, using the system that you have just described?

A. Well, I would say that I called in the area of ninety per cent of the plays that were used against Alabama in 1962 from the press box.

Q. Who was the chief defensive coach at the University of Georgia during that game?

A. Coach John Gregory.

Q. And he remained in that capacity throughout the year?

A. Yes; he did.

Q. Is he still the chief defensive coach at Georgia?

A. Well, as of the day I left, he was.

[fol. 723] Mr. Schroder: The notes again, please.

The Clerk: All right, sir.

Mr. Schroder: Thank you. Let the record show, please, I am handing Defendant's Exhibit No. 12 to the witness.

By Mr. Schroder:

Q. Coach Trippi, will you please examine the document which I have just shown to you?

Mr. Schroder: And in order to conserve time, Your Honor, I don't plan to go over it one-by-one. I think we have done enough of that, but I want him to take his time and examine it and be prepared to answer some questions.

The Court: All right, sir.

By Mr. Schroder:

Q. Just go through it, please, sir, those sheets, and I want to ask you a couple of questions after you have finished with them.

A. Mr. Schroder, I am well aware of these notes, so ask any question you may.

Q. All right. Coach Trippi, if, as a coach, you had to formulate your offense or defense from the information contained in those notes, assuming that those notes had to do with a team you were preparing to play, what, in effect, would you do or where would you start?

[fol. 724] A. Well, speaking offensively, the first thing I would do is tear them up because they are baseless; there is nothing in here that indicates any tendencies. When I

coach offensive football, I have to know tendencies. By that, I have got to know what a team does on first down and short yardage, or first down and long yardage; I've got to know second down and short yardage, or second down and long yardage; and I've got to know the same thing on third down. That is what indicates to me my offensive planning.

Q. Ordinarily, would that information be sought by teams scouting others and exchanging film?

A. Will you rephrase that question again?

Q. How is that information ordinarily made available to opposing coaches?

A. Of course, we exchange films, and we get all that from films, and scouting, prior to playing the team, and a lot of times we are not quite sure. We watch who plays a football game; we watch films to find out and be exact what's going on because the action happens so fast.

Q. In the plans being formulated by the University of Georgia in the days preceding the Alabama game, what particular offensive formations were being stressed, if any?

A. Of course, we have always been a slot team. We have used that for five years at Georgia, and we, seems like we have got the best out of our football from the slot. You don't like to change your formations too much, because it changes responsibilities, and once a team learns to block a slot offense and has confidence in it, which you have got to put into a football team, you have got to make them believe that is the best thing for them, and when that [fol. 725] occurs, you had better stick with it, and what you can do the best.

Q. It has been testified here that in the Alabama game, in addition to the slot, which you say Georgia had been using for years, Georgia employed a formation described as normal slot with weak side end out fifteen yards. Now, was that anything—was that formation new for the University of Georgia, or had it used it before?

A. Oh, I'm sure it's been used before, and I have used it before with the University of Georgia, and it's been one of our basic offensive sets, especially when we like to throw the football.

Q. You say you were at the game in Birmingham when the University of Georgia went into that formation during that time, that game, during the first half. Was it or not successfully employed?

A. Yes, it was.

Q. During the second half of that game, you being in the press box, again charged with the responsibility of watching the Alabama defenses, did you notice changes being made, or having been made in the Alabama defenses when that formation was employed?

A. Yes, they did. They changed their defensive structure; they came out with an entirely different defense to defend the split inside.

Q. When you refer to Georgia being a slot formation team, would you please describe to the Jury and the Court what distance you coached the ends to play from the tackle?

A. Well, we have coached them to play different distances from the tackle. It all depends on who we are playing, and we have always told our ends, you might go into a game maybe with a two-three yard split, and a lot of [fol. 726] times we have trouble getting out, and we always tell them to take the split that is necessary to get the job done, whatever split is necessary to take you to get the job done.

Q. Then the end is not always told to go just three yards from the tackle?

A. No, sir. Our whole backfield plan is that way. We tell our boys to line up and chest forward, and wherever the game is going, and take advantage of the situation. We cheat them over on wide plays.

Q. I don't like that—what do you mean "cheat"?

A. I mean, if they ordinarily line up four yards on certain plays, we tell them to move up to three and a half

yards; or if they line up behind their tackles, if they are going to sweep to the left half, we tell them to split the tackle. We always tell them to get in a position where you are at the advantage. That's football.

Q. What, if anything, do situations have to do with determining how wide the end is to play?

A. Well, I believe the type of play you are calling a lot of times determines the split.

Q. And what you have just said a moment ago was, I believe, that you leave that up to the ends—

A. Ends—

Q. —discretion.

A. They use their own discretion to play their position, because they are coached that way.

Q. In the Alabama-Georgia game that we are talking about, state whether or not there was anything that you saw that indicated that Alabama knew anything about what Georgia was going to do that had been prepared solely for that game?

A. There was nothing to indicate that. The only thing that was indicated to me was that Alabama blocked, tackled and ran harder than we did.

[fol. 727] Q. What effect, if any, do those basic fundamentals have upon the outcome of a football game?

A. Well, unless you do those things, you don't win in football.

Mr. Schroder: Let me check a minute, Your Honor.

By Mr. Schroder:

Q. Coach Trippi, based upon your experience as a college football player, as well as a professional football player, and also upon your experience as a college football coach and a professional football coach, I have this question to ask you: applying that experience and knowledge to the question, in your opinion can the outcome of a college football game be pre-arranged, fixed, or rigged with-

out the participation of the players, or some of the players, themselves?

A. Definitely not. I do think any fix has got to be occurred by the participants, and if it can't be fixed in any other way, we are in serious trouble in football.

Q. I didn't—I didn't understand.

A. I said, if it could be fixed any other way, I think football is in serious trouble.

Q. What is that?

A. I think if you can pick up a telephone and call somebody and express an opinion about somebody and say it's a fix, I think we are in serious trouble; because I think we express opinions every day. We give more information to the press every week to promote the game than is being expressed in these notes right here.

Q. My second question; based upon the experience that you have had as a player and coach, which I just related [fol. 728] and will not repeat, is there any way, in your opinion, that the outcome of a football game can be pre-arranged, fixed, or rigged without the players' knowledge?

A. I believe they do have to have some knowledge of it. I don't believe that I, as a coach, on the same football team, can give an adverse offensive plan and still fix a game, because basically football is surrounded with blocks, tackling and running with the football.

Q. Therefore, your answer is that it would require prior player knowledge and participation knowledge in order to—

A. Fix a football game; that's correct.

Q. In your opinion as a former player and a present coach, is there anything in that exhibit which you are now holding in your hand which, in any way, could be used to affect or have influence upon the outcome of a football game?

A. I have studied these notes, and I believe I expressed my opinion of these notes when they first were announced; and I still contend there's nothing in here to substantiate anything of value in football planning.

Q. You, at present, are where? You came here from where?

A. I came here from our training camp in Lake Forrest, Illinois.

Q. And you plan—you came in yesterday?

A. I came in Saturday evening.

Q. And you plan to return—

A. I am returning this afternoon, if I can get away.

[fol. 729] • (Whereupon a conference was held at the Bench between the Court, Mr. Schroder and Mr. Cody.)

RAYMOND W. CLARK called as a witness on behalf of the Plaintiff, having first been duly sworn, testified as follows:

Direct examination.

By Mr. Schroder:

Q. State your name for the record.

A. Raymond W. Clark.

Q. Speak up so everyone can hear you, Mr. Clark. In 1962, where were you in school?

A. I was a senior at University of Georgia.

Q. Were you, in 1962, a member of the Georgia football team?

A. I was captain of the team in 1962.

Q. You were captain of the 1962 team that played Alabama in Birmingham?

A. Yes, sir.

Q. What is your position or what position were you assigned to?

A. I was left end on the University of Georgia team.

Q. I believe the testimony is that you were injured and unable to play in the game?

A. Yes, sir; I was injured Thursday night before the game.

Q. Was that during a scrimmage, I believe you said?
[fol. 730] A. Yes, sir; we had a full scrimmage without tackling the night before the game in the stadium.

Q. Did you attend the game?

A. Yes, sir; I dressed out for the game, but I was unable to walk.

Q. Did you sit on the side lines there?

A. I stood on the side lines; yes, sir.

Q. You were how close, now, to the boys as they would be substituted for other players and as they came off the field?

A. I would talk to them as they came off the field, and more or less watching them. I was watching the ends pretty close. Barry Wilson had taken my place, and I was watching them and telling them what I could tell them what I could tell them to do to better themselves, and I was right there on the side lines as they came off the field.

Q. Was or not there anything said by any of those boys to whom you talked indicating that anything was wrong on the field?

A. No, sir; none that I heard on the side lines.

Q. Did you or not hear any of the Georgia boys come off the field complain that Alabama had an advantage over them—

A. No, sir.

Q. —because of knowing the plays or something?

A. No, sir.

Q. Were you out for the rest of the season? Did you play any more?

A. Yes, sir; my leg was broken.

Q. It was broken?

A. Yes, sir.

Q. Prior to the game played on September 22, 1962, you were, I assume, a regular participant in the practices until you injured yourself on Thursday night?

[fol. 731] A. Yes, sir; that's right.

Q. Mr. Clark, during that—strike that, please. Mr. Clark, when—as captain of the team I am asking you this

question, when is the plan, the offensive plan that the University of Georgia was going to use against Alabama on February—on September 22, given to the team?

A. You mean our plan, to Georgia, when it was given to us?

Q. Yes.

A. We usually start running against the Alabama defenses on Monday. We will start running them on Monday. We will take offense for half the practice and defense for the rest.

Q. The plays and formations then that Georgia is going to specialize in against Alabama that year were finalized in the week of the game?

A. Yes, sir; we—see, we usually have the two weeks before our Alabama game each year, and the first week is more or less conditioning, strictly conditioning. We do sprints, and we scrimmage quite a bit, and the Monday of the week we start preparing ourselves for the game.

Q. Reference has been made to the pass pattern known as, in Georgia jargon, as optional left; does that mean anything to you—

A. Yes, sir.

Q. —as an end?

A. Yes, sir. That tells us our pass pattern.

Q. Did you have such a play or not in the game plan for the Alabama '62 game?

A. An optional left?

Q. Yes, sir.

A. We had the play, but we didn't run it, I don't believe, in the game.

[fol. 732] Q. Had you used it in 1961?

A. Yes, sir; we used it, I believe, if I am not mistaken, against Florida, optional left and right.

Q. How long, to your knowledge, had that been one of the pass patterns for the University of Georgia?

A. I believe we have been running it ever since I have been at Georgia. It's been five years, I mean, the name

may have changed, but it was always basically optional left and right.

Q. Who played quarterback for Georgia? Who was the first string quarterback in that game against Alabama?

A. Larry Rakestraw.

Q. Was he or not injured before the game also?

A. Yes, sir; his ankle was injured. He had it taped up during the game.

Q. Did that have any effect upon his ability to play during that game?

A. I believe it hindered him quite a bit. He could roll out, but it hindered him a lot, and he was confined on how far he could run.

Q. Were any of the other first string members of the Georgia team also in a hampered physical condition?

A. Well, were all leg weary. You also get leg weary with two a day, you are pretty tired, and we were all leg weary and just worn out.

Q. Who was your first string defensive center?

A. I believe it was Len Hauss.

Q. Was Hauss—did he have any injury before the game?

A. Yes, sir. He had torn ligaments in his leg, and he—he had to wear a steel brace on his leg during—

[fol. 733] Q. Did he play during the game, too?

A. Yes, sir; he played.

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ROBERT WALLACE WILLIAMSON called as a witness on behalf of the Plaintiff, after having first been sworn, testified as follows:

Direct examination.

By Mr. Schroder:

Q. For the record, will you please state your full name?

A. Robert Wallace Williamson.

Q. To shorten this, are you a member or were you a member of the University of Georgia football team in 1962?

A. Yes, sir.

Q. State what position you played and what string it was.

A. Right guard on the first team.

Q. All right, sir. Did you play in the Alabama-Georgia game in Birmingham, September 22, 1962?

A. Yes, sir.

Q. About how long did you play in that game?

A. Approximately forty or forty-five minutes.

Q. Mr. Williamson, was it your brother Willie Williamson—

A. Yes, sir.

Q. —that went to Georgia Tech?

A. Went to Georgia Tech.

Q. During the game, did Georgia or not run any sweeps?

A. Yes, sir; we ran some sweeps.

[fol. 734] Q. What is a "sweep"?

A. Well, that is—

Q. Speak up, please, sir.

A. Well, the backfield motion it would be to the right or left with certain interference, the halfbacks leading.

Q. During the Alabama-Georgia game of 1962, did you, playing guard, ever pull on a sweep when you were the onside guard?

A. No, sir; I didn't.

Q. Does Georgia have any play where the onside guard pulls on a sweep?

A. No, sir; I don't believe so.

Q. Was or not that in the game plan for the Alabama-Georgia game?

A. No; it wasn't.

Q. You have been playing varsity ball at Georgia how long?

A. Past three years.

Q. During the time that you were on the field, I believe you estimated it as having been forty to forty-five minutes?

A. Yes, sir.

Q. The length of a game in actual playing time is sixty minutes?

A. Yes, sir.

Q. During the time that you were on the field as a player, will you please tell the Court and Jury if there was anything done or said by the Alabama players which indicated they might know what Georgia was going to do?

A. No, sir; not a thing.

Q. And a guard plays where with reference to where all the plays are?

[fol. 735] A. Well, center plays in the middle of the lane and a guard plays on either side.

Q. You are right in the middle of where all the players are?

A. Yes, sir.

Q. What was the, in your opinion, physical condition of the Georgia football team before the Alabama game in 1962?

A. Before, I don't think it was real good. I think a lot of the boys were pretty worn down; at least, I was. I don't know how the other boys were; a little bit weary.

Q. The Saturday Evening Post in its issue of March 23, 1963, in a story captioned "The Story of a College Football Fix" has this to say on Page 81, Column 3, and I quote, "The Georgia players their moves analyzed and forecast like those of rats in a maze, took a frightful physical beating". I want to ask you two questions about that quotation. Number one, at any time during that football game did you, who played forty to forty-five minutes in that game, ever feel that the moves of the Georgia team were analyzed and forecast as described in that part I read you?

A. No, sir.

Q. After the game was over, and I will read this part again, it says the Georgia players "took a frightful physi-

cal beating"; in your opinion, I will ask you after the game was over, had the Georgians taken a frightful physical beating?

A. I don't believe so. I know I didn't, and I played right in the middle of it.

Q. Were there any games other than this one in which the players took worse beatings physically?

A. Yes, sir.

Q. How about Georgia Tech?

[fol. 736] A. We did by them.

Q. South Carolina?

A. South Carolina.

Q. What sort of team is Alabama insofar as—well, you describe it to me in relation to the others that you played; how do they play?

A. Their lineman is about my size—I am fairly small for a college lineman and real agile and quick and they pursue real well.

The Court: Any questions, Mr. Cody?

Mr. Cody: I don't believe he is through, Your Honor.

The Court: I understood he was.

Mr. Schroder: Yes, sir.

Cross examination.

By Mr. Cody:

Q. Mr. Williamson, who was your best running back?

The Court: You referring to Georgia?

Mr. Cody: Georgia.

A. (By the witness) Well, we didn't have too many really good ones. Don Porterfield was a good one; Leon Arm-
[fol. 737] brester, our fullback, was good. I thought Leon Armbrester played the best offense game since—

The Court: Are you referring to the Alabama and Georgia game—

The Witness: Yes, sir.

The Court: —or all season?

The Witness: Well, all season; he is the best back.

The Court: Armbruster?

The Witness: He picked up more yards, I believe.

By Mr. Cody:

Q. Who was your best pass receiver?

A. I would say Ray Clark was before he got hurt, but I guess Mickey Babb was after that.

Q. Without being too modest, other than yourself, who was the best lineman you had?

A. I'd say Paul Holmes.

Q. Holmes?

A. He is up with the pros now. Len Hauss, before he was hurt bad, I thought he would be an outstanding line-backer.

[fol. 738] Q. Mr. Williamson, in acquainting the players with the game plan for this Alabama game, don't you know that the players themselves were not informed by the coaches of the game plan itself but only their particular assignments for particular plays?

A. I don't quite follow you.

Q. Prior—let's put it this way. Prior to the Alabama game, did you see any layouts of the game plan?

A. There was a layout for my group, the guards; we had our assignments.

Q. It is limited to that, isn't it?

A. There is an overall plan, too, they run.

Q. You didn't get a hold of that?

A. I don't pay attention to what the backs do.

Q. The coaches didn't tell you what the game plan for the backs were?

A. They didn't tell me.

Q. Well, that is what I'm asking you?

A. No, sir.

Q. And they didn't tell you what the game plan for the fullback was?

A. No. I knew the players that I was supposed to block for the fullback and halfbacks.

Q. And the game plan, so far as you were concerned, the only part that you were informed about was the part that you were to play in it; is that right?

A. That's right.

Mr. Cody: That's right.

The Court: All right, sir.

[fol. 739] Redirect examination.

By Mr. Schroder:

Q. And that would be made clear to the team what—how long before the game, the game plan itself; when was it finalized?

A. Usually the Monday before—I mean, the Monday before the Saturday ball game.

Mr. Schroder: All right, sir. Come down.

Mr. Cody: One more question.

The Witness: Yes, sir.

Recross examination.

By Mr. Cody:

Q. Mr. Williamson, you started on Monday of the week of the game to specifically put into operation whatever your assignment was, and that is practice for the particular plays for that game, right?

A. Right.

Q. So that necessarily those plays had to be formulated the previous week; is that right?

A. Yes, sir; I imagine they were.

MICKEY BABB called as a witness on behalf of the Plaintiff, after having first been duly sworn, testified as follows:

[fol. 740] Direct examination.

By Mr. Schroder:

Q. Would you kindly state your name for the record?

A. Mickey Babb.

Q. Where is your home, Mr. Babb?

A. Atlanta, Georgia.

Q. Where are you now in school?

A. Athens, Georgia, University of Georgia.

Q. In 1962, were you a member of the University of Georgia varsity football team?

A. Yes, sir.

Q. What position did you play?

A. Right end.

Q. Do you have or not another year of eligibility?

A. Yes, sir.

Q. You will, therefore, be on the varsity team this coming fall?

A. Yes, sir.

Q. Mr. Babb, prior to the Alabama-Georgia game in Birmingham, in September, 1962, what coaching was given you with respect to where you should play on Georgia's offensive formation known as the pro-set?

A. If I was going to swing or not?

Q. Yes, sir.

A. It was—the week prior to the game I was told that I was going to be the wide man on the pro-set every time; I would be the wide man.

Q. You use the word "swing" in describing your coaching or what was coached you. Would you please describe to the Court and Jury what "swinging" means?

[fol. 741] A. Well, we would run a pro-set, and if we say "pro-right", we'd use a slot formation to the right and send a left end out between and eight and fifteen yards; they told me the week prior to the game I would be the wide

man on all the pro-sets. On pro left, I would be wide man right, and on pro right I would be the wide man left.

Q. When you say "the week prior to the game," will you tell us what you mean by that?

A. It was on a Wednesday that I was informed that I would be the swing man.

Q. How many days before the game was that Wednesday?

A. Three; it was Thursday, Friday and we played on Saturday.

Q. During the game that the University of Georgia had with Alabama on the evening of September 22, was that formation that you have just described used or not used by the University of Georgia?

A. It has been used in the past, and we used it prior to the game.

Q. Was it used or not used during the game?

A. Yes, sir; it was used during the game.

Q. And as I understand your testimony you were the end that was out, you say, eight to fifteen yards?

A. Yes, sir.

Q. Why do you say eight to fifteen yards? Is there any discretion to you in your hands?

A. Well, it is according to the field position where we have the ball. If we are near the side line, I can't split out as far as I could if we were in the middle of the field. It is according to how the field position is.

Q. When Georgia was in the normal slot formation and you were playing the slot end, how far from the tackle would you place yourself?

[fol. 742] A. Well, you vary it sort of how the defensive man plays. I would say between three and five yards.

Q. During the Alabama-Georgia game that we are talking about did you do what you have just described?

A. Yes, sir; I played according to how the defensive man played me.

Q. The pro-set that we talked about before we talked about the normal slot, do you recall about how many times

Georgia employed that formation during the first half against the University of Alabama?

A. It wasn't—I can't remember exactly how many times we run it. It wasn't too many times as I can recall, but I am not too definite on that.

Q. Do you recall with what success the University of Georgia employed that formation during the first half?

A. It was about the only way we were moving the ball against Alabama at the time. We had gone into a pro formation and had some gains off of that.

Q. During the second half of the same game, did or not the University of Georgia use the same formation?

A. Yes; we used the pro-set in the second half too.

Q. Compare for the Court and Jury, please, sir, the success that Georgia had in the first half and the success, if any, that Georgia had in the second half when employing that pro-set formation?

A. In the first half the pro-set was successful for us, but in the second half Alabama switched their defense around, and then kind of checked our defensive formation then.

Q. Mr. Babb, are you familiar with the pass formation described as optional left in the Georgia series of plays [fol. 743] that had been used by Georgia for—in the past?

A. Yes, sir.

Q. Was that formation known as optional left in the game plan for the Alabama game of 1962?

A. No, sir.

Q. During the game in Birmingham were you in the position that you have stated you were in when Georgia was using the pro-set? Was the ball thrown to you on passes?

A. Yes, sir.

Q. During the first half of that game would you relate to the Court and Jury whether or not you were in the open, so to speak, during the first half?

A. Yes, sir; I broke an open on a number of occasions during the game, but the ball was never thrown to me.

Q. During that game, without regard to what formation Georgia was in, did you, Mr. Babb, or not, catch everything that was thrown to you?

A. I didn't catch everything that was thrown to me; that is almost impossible.

Q. Was there or not anything, in your opinion, wrong with the physical condition of your quarterback, Mr. Rakestraw, during that game?

A. Larry's ankle was broken during the summer, and he was handicapped by his ankle.

Q. Did, in your opinion, that, plus pass protection, have anything to do with Georgia's passing in that game?

A. Well, our pass protection, our linemen just didn't block too well; they just seemed to fall down on their protection blocking. Larry was rushed, and he had to throw off balance a lot of times.

[fol. 744] Q. Mr. Babb, as a member of the Georgia varsity football preparing for the Alabama game, when was the final game plan formalized?

A. We put in our game plan the Monday before the game on Saturday. We diagram all the plays on the chalkboard, and that is when we get our game plan.

Q. Are all of the members of the squad present when that is done for the players?

A. Yes, sir; yes, sir.

Q. In the Saturday Evening Post article appearing in its issue of March 23, 1963, appears this, and I will read it. "The Georgia players, their moves analyzed and forecast like those of rats in a maze, took a frightful physical beating." Now, how many minutes, roughly, did you play in that ball game?

A. I played approximately fifty minutes.

Q. Out of sixty minutes taken to play the entire game?

A. Yes, sir.

Q. In your opinion, were the moves of the Georgia players analyzed and forecast as described in that quotation I just read you?

A. No, sir. We didn't take a physical beating from Alabama. They don't play that type of ball game. They play

a hit-and-run defense. They analyze your plays as quick as possible, and they are gone; they hit you and are gone.

Q. How does that compare with other teams that Georgia played during the season?

A. Well, other teams, like South Carolina, they play an entirely different ball game. They will stand there on the line and fight you. They don't hit you and go; they stand right there and fight you. Clemson does the same thing, and Tech plays on that type.

[fol. 745] Q. In the Georgia-Alabama game did you as a player feel that your move was being—each move was being analyzed?

A. No, sir.

Q. In that same article, and in that same column, Page 81, Column 3,—will you step down here or can you read this from there—reading in the lower part of that column, sir, and I am quoting directly from the column, "Later other members of the Georgia squad expressed their misgivings to Furman Bisher, sports editor of the Atlanta Journal, 'the Alabama players taunted us,' end Mickey Babb told him. 'You can't run eight-eight pop, a key Georgia play on up, they'd yell. They knew just what we were going to run and just what we called it.'" You have heard me read that portion, and you have stood here while I read it. Did I read it correctly?

A. Yes, sir.

Q. I want to ask you, Mr. Babb, is that an accurate quotation from you?

A. That is inaccurate.

Q. Will you please use this mark and draw a sort of a parenthesis there and initial it, please, sir?

A. Right there?

Q. Yes, sir.

The Court: What page was that on? What column?

Mr. Schroder: Page 81, Your Honor, Column 3. It is the third from the last paragraph. You see it, Your Honor?

The Court: Yes.

[fol. 746] Mr. Schroder: All right.

By Mr. Schroder:

Q. You were, evidently, interviewed by the party named as quoting you at some time about that game, were you not?

A. Yes, sir.

Q. When were you—

The Court: What party is that? Mr. Bisher?

Mr. Schroder: Yes, sir.

By Mr. Schroder:

Q. When were you so interviewed?

A. It was the Friday before we had our G-Day game, spring practice. I don't recall the day. It was the Friday before the game.

Q. Would that have been some time in the spring?

A. It was—we had—

Q. February?

A. I believe it was March the 4th; I don't recall the date, but I believe—

Q. Now, in your conversation with the gentleman named, did you refer to the 1962 or the 1961 game, and, if so, what was there discussed?

A. That was the 1961 game I discussed with Mr. Bisher. What I said was not related any at all to the 1962 game.

Q. Did the University of Georgia in 1962 or 1961 have a play called "Eight-eight Pop"?

A. No.

[fol. 747] Q. Is it or not common, in your opinion, for a football player or players, when they are on the wrong end of the score, to complain a little bit about how they are being triple-teamed or double-teamed, or something like that?

A. Everybody likes to make up excuses when you lose.

Q. That is common practice; you do it yourself?

A. Yes, sir. We kind of get around and talk about the game, talking about why we lost, or something.

Q. That excuse will last about how long?

A. Until the next game. We, you know, talk about it.

Q. You see the movies after that?

A. Yes, sir. We see the movies on the Sunday afternoon after the game.

Q. What, in your opinion, was the physical condition of the Georgia team just before the Alabama game?

A. We were sort of run down. We had had two weeks of hard practice; our legs were tired, and I don't think we were physically able to play on that day.

Mr. Schroder: You may examine.

Cross examination.

By Mr. Cody:

Q. Mr. Babb, when Georgia had the ball in the middle of the field, that is, the middle of the field from the standpoint of the side lines, what instructions had you received [fol. 748] from the coaches as to how far out to go on this split end?

A. On the pro-set?

Q. Yes.

A. I split out fifteen yards.

Q. And then the only reason for you not going out that distance of fifteen yards would be on account of that ball being on the side line and not being able to go out that far?

A. We have a certain amount of yards that we can get to the side lines; six or eight yards. We just leave that line open, because you can't operate in that small a distance.

Q. Is it true, Mr. Babb, that you only receive your assignment for that particular game without knowing what the assignment of the other players were?

A. Well, we have meetings the week prior to the game, and the whole team splits up. The ends go in one room and the backs in another and the linemen in another room, and we receive our own instructions there.

Q. The ends know what they are supposed to do?

A. We know what we are supposed to do, and in a general form we know what everybody is supposed to do.

Q. They have the tackles in another room?

A. They have the tackles, guards and centers in another room.

Q. And you don't know what their instructions are?

A. I do in a round-about way.

Q. But indirectly they are not permitted to disclose that to you, are they?

A. Yes, sir.

[fol. 749] Q. Do you know what the assignment the half-back is?

A. I know in a general way.

Q. But not specifically?

A. I wouldn't know specifically because I am not a half-back.

Q. As a matter of fact, isn't it true that the—that the game plan itself is something that is within the knowledge of the coaches and not the players?

A. They diagram every play we will run on the chalk-board in front of the whole team. We watch what every man is supposed to do.

Q. When do they do that?

A. Monday prior to the game.

Q. So that is formulated prior to Monday?

A. I don't know when the coaches formulate theirs.

Q. Don't they draw up a—what is known as a game plan?

A. Yes, sir.

Q. And put it on paper?

A. Uh huh; yes, sir.

Q. Did you see that before the Alabama game?

A. Yes, sir; they gave us a game plan.

Q. A complete copy?

A. Yes, sir.

Q. What day was it that you say you talked to Furman Bisher?

A. It was on a Friday prior to our spring day game.

Q. That would be about the first of February?

A. I can't remember.

The Court: He said the first of March.

[fol. 750] The Witness: I believe we had our spring practice in February.

Examination.

By the Court:

Q. What conversation did you have with him? You said in regard to the '61 Georgia game?

A. Yes, sir.

Q. You didn't discuss the '62 Alabama game?

A. No, sir. What I said to him was in regard to the 1961 game. I made it specific to him that is what I was talking about.

Q. What did you say in regard to the '61 Alabama game?

A. He said to me, he said, "I want to ask you a question. Did the—" he said, "Did the Alabama team seem to know your plays?" I said, "Not last year. If they did, it would have been more obvious in the 1961 game, if they did." One of the boys after the game—we have got friends on all the teams. One of my friends said, "You can't run this play." You know, just general football talk.

Q. That was in the 1961 Alabama game?

A. The 1961 Alabama game.

Q. Which was played in Athens?

A. Sanford Stadium.

Q. First game of the year?

A. Yes, sir.

Q. And you were a sophomore at that time?

A. Yes, sir.

Q. That was your first game?

A. Yes, sir.

Q. Your discussion did not center on the '62 game?

[fol. 751] A. I told him I didn't know if there was any talk on the line in the 1962 game.

Q. You didn't hear any talk, if there was any?

A. No, sir, I did not.

Q. Go back to the '61 game. What is that you said about the '61 game, that it was—if it happened at all, it would have been in '61?

A. I said it would have been more obvious in the '61 game if it had happened.

Q. You mean taunting back and forth?

A. I didn't hear—I just heard from a boy, it was a half-back—

The Court: That would be hearsay.

Cross examination (continued).

By Mr. Cody:

Q. Did you have any play at all in your series that had a number "eight-eight" on it?

A. Eighty-eight, yes, sir. We had an eight-eight and a ninety-nine.

Mr. Cody: That's all.

The Court: Any further question of Mr. Babb?

Redirect examination.

By Mr. Schroder:

Q. Can you pop off of eight-eight or eighty-nine?

[fol. 752] A. No, sir; that is two entirely different plays. The blocking is different and everything.

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SAMUEL RICHWINE, called as a witness on behalf of the Plaintiff, having first been duly sworn, testified as follows:

Direct examination.

By Mr. Schroder:

Q. For the record, will you kindly state your full name?

A. Samuel Richwine.

Q. Where do you live, Mr. Richwine?

A. I live in Athens, Georgia.

Q. What is your occupation, Mr. Richwine?

A. I am the athletic trainer for the athletic teams at the University.

Q. In 1962 were you the trainer for the University of Georgia football team?

A. Yes, sir.

Q. Mr. Richwine, on March 23, 1963, the Saturday Evening Post published an article entitled "The Story of a College Football Fix." On page 81, in column 3, that article reads as follows: "And Sam Richwine, the squad's trainer, told Bisher, 'They played just like they knew what we were going to do, and it seemed to me a lot like things were when they played us in 1961 too.'" Mr. Richwine, is that an accurate or an inaccurate quotation?

A. Inaccurate.

Q. You evidently did have—before I do that, will you come down here, please, sir; I didn't read that from the [fol. 753] board. What I just read, Mr. Richwine, is right here, and you can check it again to make sure I read it right.

A. Uh huh; yes.

Q. You say that is an inaccurate quotation?

A. Yes, sir.

Q. Will you please make one of these marks there and put your initials out there? Go back to the stand.

Mr. Schroder: You may examine.

Cross examination.

By Mr. Cody:

Q. Mr. Richwine, when you were talking to Mr. Bisher, what game were you referring to, what game were you discussing?

A. The Alabama game of 1962.

Q. Did you get into any discussion of the 1961 game?

A. I made a comment about the '61 game.

Q. What was the comment?

A. I commented about what wonderful physical condition I thought they were in.

Q. Did you say anything to him about—about what knowledge the Alabama team had of the plays that Georgia was running?

A. No, sir.

Q. You were on the side line as these players came out of the game?

A. Yes, sir.

Q. Did you personally hear any comment made by any of the Georgia players about what was going on in the game?

[fol. 754] A. Well, they make all kinds of comments about "this fellow hitting me" or something like that.

Q. Was any comment made about what Alabama knew about the plays they were running?

A. No, sir.

Q. Did you have any other subject matter that you discussed with Mr. Bisher?

A. No, sir. He just came over and talked to me the one day when I was in the training room working. He asked me—I made a comment I thought they were in wonderful physical condition in '62, and I said I thought they were in better shape in '61.

Q. Georgia?

A. No; I am talking about the Alabama team.

Examination.

By the Court:

Q. What was—does he usually come over and talk to you, Mr. Richwine?

A. Oh, he comes over a lot to talk to the coaches and watch practice.

Q. What question did he propound to you when you said the Alabama team was in wonderful physical condition?

A. He asked me what I thought about the game.

Q. And that is all he asked you?

A. Made a statement like, "didn't"—something to the effect "didn't you get the opinion that they knew everything that we were going to do?" When he said "we", he meant "us".

Q. Yes, sir. What was your answer to that?

A. I told him I didn't know; I don't know one play from the other, no way for me to know that. I take care of the [fol. 755] physical conditions; I don't do anything.

Q. No semblance of anything told to Mr. Bisher in—didn't resemble this statement in any way?

A. Well, the resemblance—I referred to the physical condition of the men.

Q. Yes, sir.

A. But, in the article there, the statement, there is nothing about physical condition. That is what I said.

Q. You mentioned nothing to him in any way about any plays?

A. No, sir; I don't know—I don't know a play when I see one.

Q. The '61 game, did you discuss that?

A. I discussed the physical condition. I said I thought they were in better shape in '61 than in '62.

Q. And that's all?

A. Yes, sir.

Q. That was the only fact that you stated to him, they were in better physical condition in '61 than in '62?

A. Stated that they were in—they were in good physical shape in '62, and I thought they were in better shape in '61 than in '62.

The Court: All right, sir.

Mr. Gedy: Come down.

The Court: You may step—are you through with him?
[fol. 756] Mr. Schroder: No, sir.

Redirect examination.

By Mr. Schroder:

Q. Shortly after the appearance of this article published by the Saturday Evening Post, did you discuss what you—the quotation that was in there by you with Johnny Griffith?

A. I discussed it with him the next morning; yes, sir.

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BRIGHAM EVERETT WOODWARD, called as a witness on behalf of the Plaintiff, after having first been duly sworn, testified as follows:

Direct examination.

By Mr. Schroder:

Q. Will you please state your full name?

A. Brigham Everett Woodward.

Q. Where is your home, Mr. Woodward?

A. Augusta.

Q. Augusta, Georgia?

A. Yes, sir.

Q. You attend the University of Georgia?

A. Yes, sir.

Q. Speak up, please, sir: You play football at the University of Georgia?

A. Yes, sir.

Q. During 1962 were you a member of the varsity football team?

[fol. 757] A. Yes, sir.

Q. Do you still have another year of eligibility?

A. Yes, sir.

Q. You will play this fall, then?

A. Yes, sir.

Q. Did you play in the University of Georgia-University of Alabama game in Birmingham in September, 1962?

A. Yes, sir.

Q. What position did you play in that game, Mr. Woodward?

A. Safety man.

Q. That is on defense?

A. Yes, sir.

Q. You did not play on offense?

A. No, sir.

Q. Were you in that game as the Georgia safety man every time that Georgia was on defense?

A. Yes, sir; as far as I know. We have to get in when we can.

Q. Sir?

A. We have to get in when we can. I usually get in first play on defense, most of the time.

Q. During the 1962 University of Georgia-Alabama game, state to the Court and Jury whether or not there were any forward passes thrown by Alabama in your zone?

A. There weren't any thrown in my zone at all that night. They were all thrown in the flat or to the half-back's zone.

Q. On March 23, 1963, the Saturday Evening Post published an article entitled "The Story of a College Football Fix", and in that article it states that "the Georgia players, their moves analyzed and forecast like those of rats in a maze, to a frightful physical beating." Now, with re-[fol. 758] gard to that statement—I am going to break it down in two portions. I want to ask you this question, first. In your opinion, were the moves of the University of Georgia players, did they appear to be analyzed and forecast by the University of Alabama players?

A. Well, defensively I would say "no", that would be the only thing I can answer, because I don't play offense.

Q. The second part of that portion reads, "the players took a frightful physical beating". You were with the players after the game in the lockerroom, were you not?

A. Yes, sir.

Q. In your opinion, did the University of Georgia players take a frightful physical beating in that game?

A. No, sir; I wouldn't say so.

Q. Would you, as a defensive player, Mr. Woodward, be on the side line when substitutions were made on Georgia's offensive team?

A. Yes, sir.

Q. While on the side lines did you or not hear players running off the field stating that Alabama knew their plays and that they had been sold out?

A. No, sir; I never heard anybody say anything.

Q. What was the, in your opinion, physical condition of the University of Georgia football team before it went into the game in Birmingham?

A. We were all pretty tired. Most of us were leg weary. We had been practicing pretty hard before the game.

Q. Do you or not feel that the University of Georgia was ready for that game?

[fol. 759] A. No, sir; I don't think we were ready.

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JAMES WALLACE BUTTS having resumed the stand, testified further as follows:

Cross-examination (continued).

By Mr. Cody:

Q. Coach Butts, when we adjourned and you left the witness stand, we were talking about four specific calls among other that you made to Frank Scoby in Chicago in September of 1962. You remember our discussion about those calls?

A. Yes, sir.

Q. Two of the calls that we had—that we were discussing were, I believe, one the day before the Georgia-Alabama game?

A. Yes, sir.

Q. One call on the day of the game, and one call the day after the game; you remember that?

A. I remember you discussing the call on the day of the game, sir, but I do not remember the call that you mentioned the day after the game.

Q. Well, do you remember that I gave you access to this Defendant's Exhibit No. 17, which you may refresh your recollection from. I will leave it here where you can hold it if you want to.

A. All right, sir.

Q. Do you recall the nature of any of those four particular calls?

A. Yes, sir. The one that stands out in my mind is the one that was made somewhere around the middle of the [fol. 760] day on September 22nd, on the day of the Georgia-Alabama, the reason being already stated to you, sir.

Mr. Schroder: Let's go ahead—

A. (The witness) All the calls that I have made, Mr. Cody, to Mr. Scoby of Chicago have been for business reasons.

By Mr. Cody:

Q. Well, if so, why did you charge those calls to the University?

A. Mr. Cody, I think you know that—I'm sure it has been reported to you that I thought when I made the charges to my credit card that I was charging them to my home. I explained that to Mr. J. D. Bolton, the Comptroller of the University of Georgia.

Q. But that was in April of this year you made that explanation, wasn't it?

A. Mr. Cody, it doesn't matter when it was made, it's the truth.

By Mr. Cody:

Q. Did you ever discuss with Mr. Scoby this Continental Enterprises?

A. Yes, sir.

Q. Did he have some money tied up in that company?

A. Well, I would put it this way, sir; he bought some stock in that corporation.

Q. Do you—

[fol. 761] Examination.

By the Court:

Q. Is Continental Enterprises the one you and Coach Bryant had, and Mr. Wolfson, Sam Wolfson, is that the same corporation?

A. Yes, sir.

Q. Continental Enterprises?

A. Yes, sir, Your Honor.

The Court: All right.

Cross examination (continued).

By Mr. Cody:

Q. Do you know what the outstanding capital stock of that company was?

A. No, sir; I'm not a good businessman, sir.

Q. Do you know the par value of the stock?

A. Well, Mr. Cody, I have been a little afraid to check it lately; it's so low.

Q. Do you know what business that company is in?

A. Yes, sir; I know that the main thing they were trying to do was sell throughout America a projection type

cap on a can that projected all kinds of fruit juices, chocolate and so forth.

Q. When you and Coach Bryant got into this particular company, did you—did you know whether or not it had a surplus or big deficit; did you know anything about the financial condition of the company?

A. I had a statement, but I'm not sure that I paid any attention to it, sir.

Q. What I'm trying to find out, Coach Butts, is whether [fol. 762] or not these telephone conversations which you had with Mr. Frank Scoby in September of 1962, whether or not that—the affairs of that particular company could have taken up a big part of these telephone conversations?

A. No, sir.

Q. I see.

A. I can explain, sir, that the businesses that did take up the telephone calls were loan companies which I did not operate in any way, but which I was trying to help and Universal Food Products of Lakeland, Florida, and also, as I explained to you once before, Mr. Scoby at one time checked out Orange River Groves, Incorporated, and as I told you, he did not think it was a good investment.

Q. And you also told me it didn't take him long to make that decision, didn't you?

A. Yes, sir.

Q. Now, getting back to this relationship with Mr. Scoby where you were to get a cut on the sale of scotch whiskey, what territory was that designed to cover, this arrangement, Mr. Butts?

A. Mr. Cody, this proposition never got past the talking stage, but we did discuss the Southeast, an override on all of the products sold in the Southeast.

Q. When did you begin your discussions with him on that subject?

A. Mr. Cody, I'm very sorry, I cannot give you an answer to that question.

Q. That's all right. Were you to pay him anything for this concession?

A. No, sir; he doesn't need it, Mr. Cody, he's a wealthy man.

Q. Did you talk about what your cut would be on this deal?

[fol. 763] A. No, sir.

Q. Did you discuss what your duties were to be?

A. Yes, sir.

Q. What were they?

A. The main duties I would have would be more or less a goodwill man, furnish the name. Of course, this could not possibly have happened if I hadn't also been able, at the same time, to line up a job with a professional football team.

Examination.

By the Court:

Q. Mr. Scoby make it contingent on your getting a connection with a professional football team before he would give you this override on the scotch whiskey?

A. Your Honor, he did not, but that was—

Q. The understanding?

A. No, sir; in my own thinking.

Q. Oh, yes, sir.

Cross examination (continued).

By Mr. Cody:

Q. Well, Coach Butts, do you—do you see any inconsistency in being in that type of business, and also being connected with a professional athletic team?

A. No, sir. President Kennedy's father made two hundred million out of scotch, sir.

The Marshal: Let's have order, please.

[fol. 764]

By Mr. Cody:

Q. You are not attempting to recommend him to us, are you?

A. No, sir.

Q. At the time that you were talking to him about this arrangement, were you then athletic director at the University of Georgia?

A. Yes, sir.

Q. Then, can you give us any reasonable estimate as to the time when you first began to talk to him on this subject?

A. No, sir; but I'd like to explain to you one thing. There's not anyone any place that ever accused me of being lazy, and I was perfectly able to do everything that I was supposed to do at the University of Georgia and make some telephone calls.

Q. Let me ask you this question, Coach Butts. If it can be shown in this case by proper evidence that Mr. Scoby was a man who bet as much as forty to fifty thousand dollars on football games in one season, mostly college football games, do you think—do you see any inconsistency, as an athletic director of the University, in associating with a man of that type? I'm asking you to assume that he did?

A. Mr. Cody, I do not condone betting in any way, and in that direction you are picking the wrong man. I have never even played poker, and never even done what perhaps you and a lot of people have, bet on my golf game. I don't play golf.

Q. You talking about me and Mr. Schroder, now, aren't you?

A. Yes, sir.

Q. Let's go back and answer—

[fol. 765] The Court: All right; we're going to have order in this audience back here or we're going to clear the room, and I mean it. These outbursts—the next outburst, that's it.

By Mr. Cody:

Q. Suppose you answer my question, though, Coach Butts. If it can be shown by evidence in this case that this man bet on football games in one season between forty and fifty thousand dollars, mostly college football games, do you think it inconsistent for an athletic director to associate with a man of that type?

A. Mr. Cody, if the athletic director knew that, I will agree.

Q. Now, if that were the case, and if it can be shown that such a man did the thing which I described to you, don't you think that would hurt the University?

Mr. Schroder: If the Court please, I don't think that is properly phrased. If the man did it, it wouldn't hurt the University, unless the man connected with the University knew. That's what the man just testified to. I don't understand the question, and I don't know whether the witness did.

The Court: Would you repeat your question, Mr. Cody?

By Mr. Cody:

Q. If such were the case, that is, the case which I described in the previous question, don't you think that it would hurt the university for that situation to be known?

[fol. 766] The Court: What is your objection?

Mr. Schroder: I still don't know what situation he's talking about. Is he assuming the athletic director associated with a man he knew did that, or is he assuming the director associated with him without knowing that.

The Court: Yes, sir; I think you ought to clarify that.

By Mr. Cody:

Q. Suppose it were not known to you, Coach Butts, but suppose it was known to the public, don't you think it would hurt the University?

A. Yes, sir; but I don't think I could take responsibility for that, Mr. Cody, because I might have lunch any day at a table with people that I have no idea—

Q. I understand.

A. That's my point.

Q. Coach Butts, I'd like to pass on to another subject, just a moment. I'd like to find out from you if, since January the 6th, 1961, at various meetings which you attended as athletic director, if you have ever openly criticized the coaching staff, or the athletic board at the University?

A. I have never been conscious of doing that, sir, and I would like to add to that that I would like for my—the things that I have done to stand on record to show my regard for Coach Johnny Griffith over the years.

Q. Isn't it true that—isn't it true that before this Bryant affair came up that a representative of the athletic board [fol. 767] of the University notified you that they wanted your resignation?

A. No, sir; that's not exactly true.

Q. Well, what's the story on that?

Mr. Schroder: If the Court please, I inquire as to the relevancy of this.

The Court: Yes, sir; I think it would probably be relevant on the question of general damages, Mr. Schroder; I will let him go into that.

Mr. Schroder: As to mitigation, not as to whether there was a liable committed. I assume all of this is on mitigation of damages.

By Mr. Cody:

A. Ask your question again, please, sir, if you will?

Mr. Cody: You want it read back?

The Court: Yes; read that back, Mr. Court Reporter.

(Whereupon the Court Reporter read aloud the question.)

A. (By the witness) The answer to that is no member of the athletic board has told me they wanted my resignation.

[fol. 768] Q. What was it you wanted to explain about that subject matter?

A. What I wanted to explain was that on an occasion, the day I do not know, about the time the Atlanta Touch-down Club meets every year, Mr. Cook Harwick invited me to come by his office and he said something along that line, but at the same time he intimated he would never vote against me.

Q. But he said he was the only one—

A. No; he—

Q. —that wouldn't vote against you?

A. No, he did not, sir.

Q. Well, did he tell you that the rest of the members of the board had that attitude?

A. No, he did not, sir.

Q. Well, didn't you resign at that time?

A. I went to see the President of the University of Georgia, and told him that I would like to retire as athletic director the last day of June.

Q. Now, can you pin-point the date of that conversation?

A. I have told you, sir, it was at the time that the Touch-down Club meets in Atlanta.

Q. Wasn't that about the 15th?

A. If you say so, I'll agree that's it.

Q. What I'm trying to straighten out, Coach Butts, is that this resignation as of February 23, subsequent to the one we are talking about now, was for a different reason. State to the Court if that is the letter you wrote President Aderhold, or a copy of it, on February 23?

A. One minute, please, sir. Yes, sir; I wrote this to the President of the University of Georgia, and I'd like to explain.

The Court: You go ahead and explain.

[fol. 769] By Mr. Cody:

Q. Go ahead; you can make any explanation you wish.

A. On Friday, I believe it was February the 22nd, and I do not—I don't want to be held strictly to the date, I attended a meeting in Mr. Cook Barwick's office here in Atlanta, and for the first time—

Q. This is a different meeting from the previous one you had in Cook's—

A. Yes, sir.

Q. Go ahead.

A. For the first time—I rode over to that meeting with President Aderhold and Mr. J. D. Bolton. They did not mention anything that was to take place in the meeting. I thought it was to talk about a retirement plan, and in that meeting the so-called Butts-Bryan incident was discussed. The following day, Saturday—or let me go back to Friday night, please, sir. Friday night I received a call from Mr. Furman Bisher, sports editor of the Atlanta Journal, and he said: "I understand you are going to resign next week instead of June." I changed the subject, saying that "perhaps will see you at the Georgia Tech versus Georgia basketball game in Atlanta." But Mr. Bisher is a very persistent gentleman, and he asked me if I would be interested in professional football. I did not discuss it with him. The next morning, being Saturday, I think February the 23rd, I received a call from Mr. J. D. Bolton, comptroller of the University, and he said that he received a call from Atlanta, and: "I understand that Mr. Furman Bisher, in the Saturday afternoon Journal, will state that you are resigning at the University of Georgia." He said: "This will be embarrassing to the President." I then went to the President of the University of Georgia's office, and because I knew of the rumors related to the so-called Bear Bryant-Butts things as advertised around the country by [fol. 770] rumors, in order not to embarrass the University of Georgia I resigned, sir.

Q. Effective February 28?

A. Yes, sir.

Examination.

By the Court:

Q. Let me get this straight. I think the Jury might want to get it straight, too. You had previously resigned, Coach Butts, effective June 30?

A. Yes, sir; I had requested that they release me from my duties as of—

Q. June 30?

A. With retirement, sir.

Q. And this second resignation is another resignation which just brings it up—up-dates it?

A. That was the official resignation.

Q. All right. You had already resigned effective June the 30th, or something like that?

A. Yes, sir; yes, sir.

Q. That's what I didn't understand.

The Court: You were talking about two different resignations.

Mr. Cody: That's right.

The Court: All right, sir.

[fol. 771] Cross examination (continued).

By Mr. Cody:

Q. In this letter of resignation dated February 23rd, you state that: "During the past two years I have developed business interests. I find that I am having to devote more time to these interests. It is for this reason that I submit my resignation as athletic director of the University of Georgia effective February 28, 1963."

A. Yes, sir.

Q. Now, that is somewhat different from the explanation you just gave. Now, what is it?

A. That was very well written, sir, by the Assistant to the President, Mr. Louie Griffith.

Q. He wrote the letter, not you?

A. That's right; and it was written in his office.

Q. You signed it?

A. I signed it.

Q. Will you describe for us, Coach Butts, what these business interests were at that time and how long they had been going on?

A. Mr. Cody, I had one-third interest, stock only, in six loan offices, the location has already been described to you.

Q. I remember that.

A. Yes, sir. I had offers from at least one insurance company, and I, of course, had been involved in the Orange River Groves, Inc., which, of course, I was out of at that time.

Q. Do you have any others you want to describe to us?

A. No, sir.

Q. Were you devoting much time to this Continental Enterprises?

A. No, sir. All I did was about once a week call up and see how much it had dropped on the market.

[fol. 772] Q. Is that the company in which you lost a lot of money?

A. Well, Mr. Cody, it remains to be seen how much money I will lose. It hasn't been sold to date.

Q. Did you take part in the organization of the corporation known as the B. E. M. Corporation? Wasn't that a real estate venture?

A. No, sir. I have never taken part in the organization of a real estate organization.

Q. What was the B. E. M. Corporation; do you remember that?

A. No, sir; there—

Q. Did you have a company by the name of Coffee Break Sales?

A. No, sir. I had some stock in a corporation called Coffee Quick.

Q. You don't remember anything about the Coffee Break Sales and Service Company?

A. I think at one time, sir, I bought some stock in it, but I am not sure of the name, and I think my money was returned to me at a later date.

Q. What is the name of this other company, the Coffee Break Distributing Company, wasn't it?

A. The name of it was—please don't—

Q. Go ahead.

A. Coffee Break, Incorporated, I think, sir.

Q. Were you devoting much time to that, sir?

A. Not any, sir.

Q. What about that Universal Food Products thing?

A. I did not devote any time to that, sir, except making some telephone calls in that connection.

Q. What about that Orange River Grove?

A. Mr. Cody, I had a clear understanding when I went into that corporation that I would not spend any of my time, but I became alarmed because I was afraid some of the people who had purchased the contracts in this corporation [fol. 773] would lose their money, and I did put some time into it for that reason and that reason only.

Q. Getting back, Coach Butts, for the moment when we were talking about resignations when you resigned as coach following the 1960 season, did you intend, at that time, to ever get back in the coaching of any athletic team?

A. Mr. Cody, as I told you in my deposition, which you have—

Q. That is not in evidence yet. Let's keep it on the evidence in the courtroom.

A. Yes. I intended to try professional football if given the opportunity, sir. May I explain? Professional football is different from college football in that it is not necessary to teach positional play, and you can recruit the material in a much different manner.

Q. You mean by that, it is not as strenuous?

A. I believe, sir, while the game is going on, all football games are strenuous, but the college coaching game is about a twenty-four hour a day job.

Q. What did you tell the University officials when you resigned at that time?

A. Mr. Cody, I did not talk to but one official, that official being President O. C. Aderhold.

Q. What did you tell him?

A. I told him that my blood pressure was very high, and that I had a very hard time making it through the last two games of the season, and I thought because of my health that I should drop out of the picture as a football coach.

Q. Just wasn't physically up to it?

A. I told you exactly what I said, sir..

Q. Did you have anything to do—getting back now to these businesses you said you had developed over this two-year period, the two-year period mentioned in this letter, [fol. 774] did you have anything to do with a concern called the Trans-America Securities Corporation?

A. Mr. Cody, I was on the board at that company, Trans-American, and I attended only two meetings of the board, and I have to confess to you, I didn't know what the business was all about when I did attend the meeting.

Q. What about this—you had, previous to that, a few years ago, operated a restaurant in Athens, hadn't you?

A. Yes, sir; and I didn't have anyone to watch the cash register.

Q. You lost a lot of money in that?

A. I lost some.

Q. Was that the Huddle, what they call the Huddle?

A. Yes, sir.

Q. What about the Frost Free Groves, Coach Butts? Were you interested in that company?

A. I never heard of that, sir.

Q. Didn't you have an interest in a lumber business?

A. No, sir.

Q. What about a trucking concern up in Philadelphia; didn't you have an interest in that business?

A. No, sir. The way you might—I don't think I need any explanation, unless you want it, but I have two friends

there. One of them is deceased, Lewis and Leonard Tose had a very large trucking business, but I had no interest in it at all.

Q. What is this insurance business you said you were trying to develop?

A. Sir, I have not tried to develop an insurance business, but there was an insurance company started in Birmingham, Alabama, the home office is now in Dallas, Texas, that since the Saturday Evening Post story broke, they invited me out for a conference, but I wasn't able to make the connection, and so that is the status of that at this time.

Q. You are trying to get an agency in Georgia?

[fol. 775] A. That was the talk under consideration, sir.

Q. Coach Butts, weren't you, at the time you wrote this letter, interested in a couple of housing developments, one in Athens and one in St. Simons?

A. No, sir; absolutely not.

Q. Well, these businesses that you were devoting some attention to, do you see any inconsistency in that and trying to be athletic director at the University?

A. Well, Mr. Cody, you can make a case against anyone, but I would like for you to investigate of the members the faculty of the University of Georgia. And you would find that some of them own stock in different corporations.

Q. But not—not trying to run a business?

A. I have not tried to run a business, sir.

Q. Well, if you—if you devoted a lot of your time in the running of any of these businesses, don't you think that would have hurt the University of Georgia?

A. Well, to my way of thinking it did not, sir. That is my opinion, and it could—someone else could have another opinion.

Q. Coach Butts, let me ask you a few questions about where you made your headquarters when you came to Atlanta and made business calls. What—what offices did you use?

A. Well, the Rhodes—in the Rhodes-Haverty Building, there was an office called Communications International.

It was convenient, and I used it at times to make calls. I think that is what you're referring to.

Q. That is the business that this fellow Werbell (?) had in Atlanta?

A. Yes, sir; it was an advertising agency, so to speak.

Q. You did make a good many trips to Atlanta during the year, is that true?

[fol. 776] A. Yes, sir; I made quite a few trips, and I made a lot of speeches all over the South.

Q. When you—when you had a lot of telephoning to do, did you use the office of this Communications International?

A. At times I did, sir.

Q. How many trips would you say you made to that office during the year 1962?

A. Mr. Cody, I have no idea.

Q. They were numerous, weren't they?

A. Several.

Q. Well, they were numerous?

A. Well—

Q. If you have no accurate idea about it, I don't insist.

A. I do not have an accurate idea about it, sir.

Q. All right, sir. Do you remember going to the office of Communications International, that is, here in Atlanta, on September 13, 1962?

A. No, sir; I do not.

Q. Do you remember being in Atlanta on that date?

A. Mr. Cody, as you know, I had a desk record, and I thought I was in Atlanta, as I told you. It doesn't show on the record. However, the telephone company's records show I was in Atlanta and did make a telephone call on that day.

Q. Do you have any independent recollection yourself—

A. No, sir; I do not.

Q. Do you remember receiving a telephone call from Coach Bear Bryant on September the 16th, 1962?

A. No, sir; I have received many calls from him, but I don't remember any particular call any time.

Q. You have no such memory, even though that call came to you at your home?

A. No, sir; I have had a lot of calls at my home.

[fol. 777] Q. Have you had a lot of calls that lasted an hour and seven mintues?

A. The amount of time on such a call doesn't impress me very much, because I have made many calls, long calls.

Q. But you remember nothing about this one?

A. No, sir.

Q. Do you recall that on May 3rd, 1963, I took your deposition in your attorney's office before a Court Reporter for the purpose of obtaining evidence to be used in the trial of this case?

A. I did not remember the date until you questioned me Friday, and you told me that.

Q. You remember the occasion, though?

A. Yes, sir.

Q. And you remember being under oath at the time to tell the truth?

A. Yes, sir; and I am under oath now.

Q. I'd like to read to you, Coach Butts—

The Court: What page are you reading from in the deposition?

Mr. Cody: I can't give you the page at the moment, but I want to quote it.

Mr. Schroder: I would like to have it so I can check it. Maybe one of his associates here can tell me.

The Court: Yes, sir. I think he is entitled to the page.

Mr. Cody: I don't believe I have the page before me at the moment.

[fol. 778] The Witness: Your Honor, may I get a drink of water?

The Court: Yes, sir. Bring Coach Butts a drink of water, Mr. Marshal.

The Witness: That is all right; I don't want to delay—

The Court: You are entitled to a drink of water anytime. You can just sit up there. Can you find the page number?

Mr. Cody: I can't.

The Court: Go ahead and ask him the question. If Coach Butts remembers the questions, we will save time.

Mr. Cody: These are the questions which appear in the pleadings under the motion to compel. It is a part of the record in this case.

The Court: All right, sir. Mr. Schroder can remember the questions. We will save time on it.

Mr. Schroder: May I just have the question—it is voluminous. May we see what the question is?

The Court: I think he said they were in the motion to compel.

[fol. 779] Mr. Cody: It is in the motion to compel.

Mr. Schroder: Wouldn't that have been in July, a different deposition?

Mr. Cody: No; it would have been in May.

The Court: All right, sir. Go ahead.

By Mr. Cody:

Q. I want to read to you about eight or ten questions that were propounded to you at that time by me, and when I have finished I'd like for you to state whether or not you refused to answer those questions.

The Court: Let the Jury go—

Mr. Schroder: Wait a minute.

The Court: Let the Jury go to the Jury room.

Mr. Schroder: Yes, sir.

Mr. Cody: This is not—

(Whereupon the Jury retired from the courtroom at 2:45 p. m.)

[fol. 780] Mr. Schroder: May I be heard on this, whatever is going on?

(Whereupon a conference was held at the Bench between the Court, Mr. Schroder and Mr. Cody.)

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By Mr. Cody:

Q. Coach Butts, in football parlance, does the term "split end" refer to a formation?

A. The answer is 'no'. An end may be split from any formation used in football, and I'd like to call your attention to the fact, Mr. Cody, that when my first deposition was continued I corrected that in my continued deposition. In other words, Mr. Cody, to explain, you can have what they call a full set; every back in his normal position, just three men back, the normal T and split either end way out. You can split him out from a slot, from a wingback formation, from almost any formation used in offensive football today.

Q. Is the term "slot", does that refer to a formation?

A. Slot formation, if nothing else is added, refers to a simply slot formation with an end on one side moving out creating a slot with a halfback on the inside.

Q. What you are saying though, it would be variations?

A. Oh, yes, sir.

Q. In this deposition that we—that you gave on July—in July, I'd like to read from one page there.

Mr. Schroder: May I again ask counsel—

Mr. Cody: 147.

[fol. 781] Mr. Schroder: Sir?

The Court: I assume we have an original here.

The Clerk: Yes, sir.

The Court: Open the original.

The Clerk: All right, sir.

Mr. Cody: I don't need the original; it's on Page 147.

By Mr. Cody:

Q. I will ask you, Coach Butts, if you didn't make this statement, referring to a quick kicker.

Mr. Schroder: If the Court please, I don't think it is proper to read him that now until he asks him the question first, and if he testified to something different, then he can

attempt to contradict him, but he can't proceed to read all the way through from his deposition.

The Court: I think he can ask him did he testify as to a quick kicker on such and such a date, and is that his opinion now.

Mr. Schroder: Yes, sir.

[fol. 782] The Court: All right; I think he can proceed that way.

By Mr. Cody:

Q. Getting back to these Burnett notes and that particular phrase "can't quick kick", question—let me ask you if this is your evidence, Coach Butts. It is on Page 146 and 147. "Coach Butts isn't the main effectiveness of a quick kick, doesn't it lie in the surprise of the defensive team with the kick?" Answer: "Well, I don't see any need of quick kicking as Georgia used it as surprise, if that's the question you want, because they line up in a kicking formation. It would be stupid. What made it good at the University of Georgia was the fact that the safety man had to be worried about passing with Jake Saye in it."

Question: "Because Saye might pass?"

Answer: "Saye might pass, see. Well, when a team lines up in a kicking formation you have to be pretty dumb not to anticipate a kick. Now, Paul Bryant and Bobby Dodd are the two best proponents of the quick kicking game that I know of. And in a quick kicking game with a man in a normal position, lefthalf is in front of fullback quick kicks ahead of time, is very disconcerting. But we just haven't had that man."

That a correct transcript of your testimony?

A. I made that statement, sir, and I ask for the blackboard. I want to show exactly what I said.

Q. I am reading what you said.

A. I know, but I want to show this Jury—I am not worried about what you are reading.

Q. I am not asking you to use the blackboard.

The Court: You answer the question, and Mr. Schroder have you explain it on redirect.

[fol. 783] The Witness: I am not ashamed of that statement at all; I am proud of it; nothing wrong with it.

Mr. Schroder: I think perhaps Mr. Cody ought to complete the reading of the answer which he stopped in the middle of.

By Mr. Cody:

Q. That part of your answer is correct; is that right?

A. Yes, sir.

Q. That was your testimony?

A. If I made it, that is what I thought.

Q. Does Georgia belong to the National Collegiate Athletic Association?

A. Yes, sir.

Q. Has the Southeastern Conference, of which Georgia is a member, have they adopted the By-Laws and Constitution of the National Collegiate Athletic Association?

A. Yes, sir. The University of Georgia operates under the organization that you are speaking of.

The Court: You mean they operate under the Southeastern conference, or the N.C.A.A.?

The Witness: The Southeast, sir, they operate under the Southeastern Conference, but the Southeastern Conference operates—

[fol. 784] The Court: Under the N.C.A.A.?

The Witness: —Under the National Collegiate Athletic Association.

By Mr. Cody:

Q. Let me ask you if you are familiar with this paragraph in the Constitution and By-Laws of the National Inter-collegiate Association?

Mr. Cody: It is on Page 5. I furnished you with a copy of this.

Mr. Schroder: Did you?

Mr. Lockerman: Just a moment.

Mr. Cody: On Page 5, Section 6.

Mr. Lockerman: Just one minute.

By Mr. Cody:

Q. Are you familiar with this particular part of Section 6?

A. I haven't read it, sir.

Q. I am going to read it to you. "Individuals employed by or associated with member institutions for the administration the conduct or the coaching of Intercollegiate Athletics and students competing in Intercollegiate [fol. 785] Athletics, shall report themselves with honesty and sportsmanship at all times to the ends that Intercollegiate Athletics as a whole, their institutions, and they as individuals shall stand for the honor and dignity of fair play and the generally recognized high standards associated with wholesome competitive sports." You familiar with that section?

A. I haven't read it, sir, but I think it is a good—

Q. Let me read you this paragraph on Page 6, which is a part of the official enforcement program. "Individuals employed by or associated member institutions for the administration, conduct or the coaching on intercollegiate athletics are in the final analysis teachers of young people. Their responsibility is an affirmative one, and they must do more than avoid improper conduct or personable acts. Their own moral values must be certain and positive, that those younger and more pliable will be influenced by their example. Much more is expected of them than the less critically placed citizen." Are you familiar with that section?

A. No, sir; I have never read it, sir.

Q. Coach Butts, in order to establish the date of your approval of this list of calls that we referred to, will you state whether or not that is the letter you wrote to Mr. Bolton on the date mentioned?

Mr. Schroder: I don't believe any point has been raised as to the lack of authenticity of this.

The Witness: Yes, sir; I wrote the letter.

[fol. 786] Mr. Cody: I see.

The Court: I don't—I don't know exactly what you all are proving or disproving.

Mr. Cody: That is the date, I am trying to get the date straightened out.

The Court: All right, sir.

Mr. Cody: I believe that's all.

The Court: All right, sir.

Mr. Cody: This has been identified as Defendant's Exhibit No. 18.

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Redirect examination.

By Mr. Schroder:

Q. At the close of the hearing on Friday Mr. Cody at that time was asking you had you not, when your deposition was first taken, testified that the resignation tendered by you on February the 23rd, was to become effective in March rather than in February, and I believe you pointed [fol. 787] out to Mr. Cody that you had made a correction of that when your deposition was resumed later?

A. Yes, sir.

Q. Will you read from your deposition the portion where that was corrected when Mr. Dody was present there in my office and asking those questions?

A. Are you sure, sir, that you have given me the right page?

Q. Is that Page 153?

A. No, sir; 152; excuse me. The part of my deposition that Mr. Schroder is referring to reads like this, quoting Mr. Schroder: "There are one or two things, Mr. Cody, that Coach Butts called to my attention that he would like to correct in connection with his previous deposition that

he had reflected upon since it was taken in May, one of which had to do with the effective date of his resignation as athletic director."

Quoting Mr. Cody: "Well, let him state for the record what corrections he wants to make."

"Mr. Schroder: 'If you did say it was in March, what did you mean to say?'"

"The Witness: 'Mr. Cody asked me the question in the previous deposition when my resignation was effective as athletic director. I think I gave the answer 'at the end of March.' The correct answer should be the end of February.'"

"Mr. Cody: 'Go ahead and state whatever corrections you have to make. I don't care to ask any questions about it.'"

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[fol. 788] JAMES WALLACE BUTTS having resumed the stand, testified further as follows:

Redirect examination (continued).

By Mr. Schroder:

Q. Mr. Butts, on cross-examination, you were questioned about a business association you had with a gentleman named Frank Childs. When you were discussing this business connection with Frank Childs, what was he at the time, and what business was he in?

A. He was vice-president of the Bank of Gray, sir.

Q. And you mentioned the name of Westmoreland; what is his first name?

A. Carl Westmoreland.

Q. What is he?

A. He is a lawyer in Macon, Georgia.

Q. On cross-examination you were asked about a telephone call made by you from Birmingham on September 22 to Frank Scoby in Chicago, and you stated that you did

recall that telephone call. Did you explain how you happened to remember that call?

A. I am not sure, sir, but the reason—

Q. You are not sure you explained it, or you are not sure of what?

A. I am not sure I explained it.

Q. All right, sir, would you please explain it?

A. Well, Mr. Schroder, it seems that an article occurred in a Tampa newspaper about this matter, and I received a call from Mr. Joe Sargeant, who lives at Lakeland, Florida, not too far away. He was—in explaining, I'd like to say Mr. Joe Sargeant has a dairy at Coleanor, Alabama, [fol. 789] which is sixteen or eighteen miles out of Birmingham. He met me for lunch the day of the Georgia-Alabama game, and he wanted me to speak to Mr. Frank Scoby about some business negotiations that he had, so I called Mr. Scoby and put Mr. Joe Sargeant on the telephone, and he talked to him at that time. That is the reason I can identify the call, because Mr. Joe Sargeant reminded me of the same.

Q. Within the past couple of months?

A. Well, it would have to be since the article was written about Mr. Frank Scoby.

Q. After this publication, after the March 23 issue of Post?

A. Mr. Schroder, I am not sure that it came after that time—yes; I am sure it was. I was confused with another investigation that went on here in Atlanta; yes, sir; it came after the Saturday Evening Post, sir.

Q. All right, sir. Now, much was asked you on cross-examination about investments that you had made. Would you please now describe to the Jury and Court just what your present financial situation is?

A. Mr. Schroder, the best to describe it and get to the point, I am insolvent at this time.

Q. What is your income?

A. I have no income.

Q. On cross-examination it was pointed out to you that in the Saturday Evening Post article that you had been requested to submit yourself to a lie detector machine examination, and that you at that time refused to do so. Now, will you please inform the Court and Jury what your reasons were for so declining?

[fol. 790] A. Mr. Schroder, at that time I considered it, more or less, an insult, and that was my reason for not taking the lie detector test.

Q. Have you since taken one at my insistence?

A. Mr. Schroder, you know that you insisted on me taking a lie detector test.

Q. All right, sir. Now, before the issue came out in question, I believe you were testifying the other day that prior to that time that you were engaged in negotiations with the National Football League team known as the Dallas Cowboys; is that true or not true?

A. That is true.

Q. I am just going to ask you this: Since the date of the publication of the article in question, have you heard further from the Dallas Cowboys?

A. No, sir.

Mr. Cody: He has already testified to that, Your Honor. He is just repeating what's already been said.

The Court: I believe you brought it out on cross-examination. I will let Mr. Schroder ask him about that. I will overrule the objection.

By Mr. Schroder:

Q. In checking through these toll tickets, telephone toll tickets which were brought into Court by Mr. Fleming, have you been able to tell the Court and Jury where you were on September the 11th, two days before the so-called telephone conversation?

A. Mr. Schroder, in checking my record of speeches I [fol. 791] made, I find that I was in Cullman, Alabama, at that time.

Q. On September the 7th?

A. Yes, sir.

Q. In the State of Alabama?

A. Yes, sir. I made more than ten speeches in Alabama during the last season.

Q. All right, sir. On September the 11th, two days before this so-called interception, while you were in Alabama, did you at that time get in touch with Coach Bryant and meet him anywhere to discuss anything about the game?

A. No, sir.

Q. On the first page of the Saturday Evening Post article in question the editors of the Saturday Evening Post had written this, and I want to read it to you. "Not since the Chicago White Sox threw the 1919 World Series has there been a sports story as shocking as this one. This is the story of one fixed game of college football. Before the University of Georgia played the University of Alabama last September 22, Wally Butts, athletic director of Georgia, gave Paul 'Bear' Bryant, head coach of Alabama, Georgia's plays, defensive patterns, all the significant secrets Georgia's football team possessed. The corrupt here were not professional ball players gone wrong, as in the 1919 Black Sox scandal. The corrupt were not disreputable gamblers, as in the scandals continually afflicting college basketball. The corrupt were two men, Butts and Bryant, employed to educate and to guide young men. How prevalent is the fixing of college football games? How often do teachers sell out their pupils? We don't know yet. For now we can only be appalled." Does that editorial con-[fol. 792] tain any truth insofar as you, Coach Wallace Butts, the Plaintiff in this lawsuit, is concerned?

A. No. And I would like to explain that for a time I hid from people, but not any more. I am looking them in the eye, because it is not true.

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JAMES WALLACE BUTTS having resumed the stand, testified as follows:

Recross examination.

By Mr. Cody:

Q. Coach Butts, are you sure you feel like continuing with this examination?

A. Yes, sir.

Q. I show you, Coach Butts, what appears to be a certified copy of a financial statement which you furnished to the Comptroller General of the State of Georgia, in July, 1901. Do you remember preparing that statement or having your auditor do so?

A. No, sir; I do not remember the details of it, sir.

Q. You have testified a few minutes ago, though, that you are now insolvent?

A. I am insolvent.

Q. Did you sign that statement?

A. That is my signature.

Q. Take a look at this statement and see if it doesn't show that you have a net worth in excess of two hundred thousands dollars as of that date?

A. I have never been worth a hundred thousand dollars.
[fol. 793] Q. You mean by that, that that is a false financial statement?

A. Mr. Cody, this statement was filled in. I signed it. I didn't know anything about what was in it.

Q. Let me have it a minute.

A. All right.

Q. Why did you sign it? What was the purpose of the instrument?

A. I don't know what the purpose was, because such a statement was not required of any such amount.

Q. Well, I mean, what were you driving at when you signed this statement and turned it over to the comptroller General of the State of Georgia? What were you after?

A. We had some applications for loan licenses, sir.

Q. Was that these small loan businesses that you had throughout the state, sir, the Instant Loan Company?

A. Yes, sir; they were small loan licenses that I had some stock in.

Q. You don't deny that this statement shows you have a net worth of two hundred five thousand nine hundred eighty-eight dollars?

A. Mr. Cody, there's been a big change in my financial status since that time, and I do not know exactly what I was worth at the time.

Q. This is July the 17th, 1961. If you had—if you had a net worth of two hundred five thousand nine hundred eighty-eight dollars as to that time, what has happened to it?

A. Mr. Cody—

[fol. 794] Mr. Schroder: I suggest that counsel—

A. (The witness)—I spent—

Mr. Schroder: Wait. May I suggest that counsel let the witness see the statement so he can see what is listed on there as assets.

The Court: I presume a financial statement would be broken down in to "real estate," "insurance policies," "liabilities," whatever it might be.

The Witness: Mr. Cody, for example, my residence and furniture is rated at ninety thousand, ninety thousand dollars. When the property was sold it brought forty-one or forty-two; I am not sure of the exact amount. Let me ask you this question.

Mr. Schroder: Let him go on with the assets.

The Court: Let him go on with it.

The Witness: Since that time my stock values have gone down to—quite a bit, and I do not know exactly how much. What else you want to know, sir?

By Mr. Cody: "

Q. What stock values were you talking about?

[fol. 795] A. Well, Continental Enterprises has gone

down from six to less than a dollar a share. I had to drop some other things—

Q. Let me have that back when you get through.

A. All right, sir.

Q. That is the company that you and Wolfson and Coach Bear Bryant were involved in?

A. Mr. Cody, I was not involved with anyone in the company, I owned some stock in the company, and so do many other people.

Q. Did you see—

Mr. Schroder: Whoa, whoa; let him finish.

The Witness: Many people own stock in that company.

By Mr. Cody:

Q. Did you notice this instrument was signed by Thomas L. Williams, A. C. P. A.?

A. Yes, sir.

Q. Is he your auditor?

A. Yes, sir.

Q. Does he handle the preparation of your tax returns and instruments of that nature?

A. Yes; he does, sir. But I might add, my income tax has been checked very carefully for years.

Q. I am not asking you that. Just answer my questions, Coach Butts.

A. All right, sir.

Q. But it is your testimony that at the time you signed this, you didn't know what you were signing; is that, in [fol. 796] substance, what you are undertaking to tell this Court?

A. Yes, sir.

The Court: What is the purpose in filing a statement with the Comptroller General? Does he handle small loan licenses?

Mr. Cody: Yes, sir. He has control over it under the law of Georgia. It is a discretionary matter as to the issu-

ance of those licenses. Also has supervision over the operation of them after they are granted.

By Mr. Cody:

Q. Do you still have your interest in these small loan businesses?

A. It is in my name, Mr. Cody, but it is used as collateral; it is being used as collateral at this time.

Q. Do you know, Coach Butts, whether or not the Comptroller General of the State of Georgia has withdrawn several of those licenses that were heretofore issued?

A. The Comptroller General of Georgia—at the present time?

Q. Yes.

A. Mr. Cody, I prefer, if the Court will permit, this as an answer and you will accept it, I prefer that you consult with Mr. James Bentley, Comptroller General.

Q. Well, don't you know? Can't you answer my question?

A. I can answer the question that he has never taken one away from me.

[fol. 797] Q. Well, had—

A. If that is the answer to your question.

Q. Well, have any of the licenses to operate this business been cancelled by him, that is, licenses heretofore issued to the Instant Loan Company?

A. Well, I—

Q. You would know that, wouldn't you, Coach Butts?

A. I can answer your question, Mr. Cody.

Q. What is it?

A. I turned in one, but I had a clear understanding as to the future status of this company.

Q. Is that the only license that's been withdrawn?

A. Yes, sir.

Q. Now, Coach Butts, you have explained some of the things—some of the nature of the telephone conversations with this Mr. Scoby. Now, do you—I assume you have had

an opportunity to analyze some of these telephone calls just like I have or at least your counsel has; he's had a copy of this list?

A. Yes, sir.

Q. You and your secretary, Mrs. Malcolm, actually helped in the preparations of that list, didn't you?

A. Yes, sir.

Q. With Mr. Bolton?

A. Yes, sir.

Q. And when it was finished you approved it in every respect, didn't you?

A. Yes, sir.

Q. You found no error in it?

A. No, sir.

Q. Now, did you know that—let's just take the month of April 1962, that there—did you know that there were no calls to Scooby by you? Have you checked that? Let me [fol. 798] point out to you what I have found, and you and your counsel can correct me if I am wrong, and it will give you an opportunity later to do it. Did you know that there were no calls in April and May of 1962?

A. Mr. Cody, that is of no significance to me.

Q. Well, it might be to me or to the Court. Let me give you my summary, and see if you have any contest about it. No calls in April or May, five in June, two in July, four in August, and then fourteen in September. Why the difference?

A. I might point out, Mr. Cody, if you check you won't find any since that Saturday Evening Post story broke.

Q. I am not asking you about that, Coach. Suppose you just answer the question instead of arguing with counsel about it.

That is all I am trying to do is solicit some answers from you.

A. Mr. Cody, my answer is this. By your implication you are implying that I have called him in relation to gambling. I have never—

The Court: No, sir.

Mr. Cody: I am not implying anything. I am asking you a fact.

The Court: Probably we'd move faster if you will answer or not, and your counsel can—

The Witness: Ask me the question, please, sir.

[fol. 799] By Mr. Cody:

Q. You find anything wrong with the tabulation that I just related about these calls?

A. No, sir.

Q. Now, did you know that—aren't you familiar with the deposition that has been taken which indicates—

Mr. Schroder: I don't believe counsel can state what a deposition indicates. If he wants to read it, he is at perfect liberty to read it.

The Court: Yes, sir; I sustain the objection.

By Mr. Cody:

Q. Do you remember approximately how many calls Mr. Scooby made to you in 1962?

A. Mr. Cody, I have never read his deposition.

Q. I see. That is all right; that answers my questions. I have one or two more questions to ask you, Coach.

A. All right, sir.

Q. Do you remember that on October the 20th of 1962 that Georgia played Florida State College down in Florida?

A. Yes, sir.

Q. Do you remember that two days before the game, namely, on October the 18th, that you telephoned Coach Peterson from Atlanta and talked to him for a period of fifty-seven minutes?

A. I am not sure where the call was made, sir, but I remember making the call, and I want to explain.

[fol. 800] The Court: All right, sir, go ahead and explain.

A. (By the Witness) I made the call in behalf of the University of Georgia. The head defensive coach came to

me and he had seen pictures of the University of Miami versus L. S. U. football game, and in this picture L. S. U. was using what is called a crack block; in other words, putting a flanger out what we call opposite, a counter flanger. This flanger was going in motion and hitting the Miami ends from the rear. L. S. U. furnished Coach Peterson, the coach of F. S. U., Florida State University, and I called him in behalf of the University of Georgia, and I did a good job, because I talked him out of using this crack block in the football game to be played with the University of Georgia.

Q. Well, let me ask you this question. Do you remember mentioning to him that in that coming game two days later that Georgia might use the Utah pass?

A. No, sir; I don't remember that.

Q. You know what I am talking about in calling it a Utah pass; that is the shovel pass, isn't it?

A. I was the first one put it in in the South, so I know it; yes, sir.

Q. Did you know that Georgia hadn't used that pass up until that time in the 1962 season?

A. No, sir.

Mr. Cody: I believe that's all.

[fol. 801] Examination.

By the Court:

Q. I am confused. What is the relationship between L. S. U. and F. S. U.? I mean, I am not—

A. Your Honor, sir, L. S. U. employs the same type of attack as does F. S. U., because Coach Peterson was a member of the Paul Dietzel coaching staff at L. S. U., and of course, evidently I didn't know it, but the members of the coaching staff at the University of Georgia knew that F. S. U. had this crack back block which injured two or three men in the L. S. U. versus Miami football game, and they were concerned about it, and I want to explain further

that I did not call as an interim member of the Rules Committee at Large; I called them simply to help the University of Georgia, which I did.

By Mr. Schroder:

Q. Is the block to which you are referring to a crippling block?

A. Well, Mr. Schroder, if you want to be the end, I can demonstrate.

Q. No, sir; I don't care about that.

The Marshal: You will have to remain quiet in the courtroom, please.

By Mr. Schroder:

Q. Did the chief defensive coach at the University of Georgia tell you in connection with that call—

[fol. 802] Mr. Cody: Your Honor, I object to that for two or three reasons. It is leading, it—

The Court: I think, Mr. Schroder, it is leading.

Mr. Schroder: Sir?

The Court: It is leading.

Mr. Schroder: I will withdraw it and rephrase it.

The Court: All right, sir.

By Mr. Schroder:

Q. What did the University of Georgia chief defensive coach tell you that he was teaching his boys in connection with that game if that block was used on Georgia?

A. He advised me that the University of Georgia had put in the same plan, and that if Georgia—Florida State University used it against the University of Georgia, the University of Georgia would in turn use it against Florida State University.

Q. With the results being what, in your opinion?

A. In my opinion the sort of fiasco was pending with penalties, and another thing, I wanted Georgia to win the

football game, and I knew that if Georgia started into a new plan of this kind they'd be awkward in carrying out the [fol. 803] plan and would have a better chance to get penalties in using that plan.

Q. State whether or not—did you say you were successful in keeping Florida State from using that against Georgia?

A. It was not used in the game, sir.

Q. All right, sir. Let me turn to this statement, financial statement that was—that you were being questioned about under the heading of "Assets" is listed four thousand eight hundred dollars in the bank. Under "Marketable Securities" is listed fifty-two thousand six hundred sixty-two dollars, which includes a footnote, seven thousand shares of Continental Enterprises stock. Now, your testimony is that when that statement was prepared by an accountant in July, 1961, the market value of that stock was what, approximately?

A. About six dollars per share, I think.

Q. And today, the market value of that—of that seven thousand shares of stock is approximately what?

A. Less than one dollar, sir.

Q. Also included in that item is thirteen hundred shares of Georgia International Life Insurance Company stock. Where is that stock or shares of that stock?

A. Mr. Schroder, I had to sell that stock because of recent events.

Q. What events?

A. Well, right now I am unemployed.

Q. Under the item "Investments in Closely Held Corporations" is listed ninety-three thousand five hundred dollars, footnoting that, Orange River Groves, Inc., seventy-eight thousand five hundred dollars. What is that worth today?

[fol. 804] A. Mr. Schroder, that stock is not worth anything, and the value as shows in this statement was estimated on the value of the receivables held by Orange River Groves, Inc., at that time.

Q. Under the same caption "Investments in Closely Held Corporations" ninety-three thousand five hundred dollars is listed, Hollywood Estates, Inc., fifteen thousand dollars. Where is your equity in that investment today?

A. Mr. Schroder, the way that figure was arrived at, someone in my office called the President of Hollywood Estates, Charlie Evans—

Q. That is not my question. My question is: Where today is your investment in that corporation?

A. The stock was sold to pay a loan and was paid on a loan at the Hubert State Bank.

Q. Well, you don't have that anymore?

A. I do not have it.

Q. All right, sir.

A. No, sir.

Q. Eighty thousand dollars under "Assets" is listed as cash surrender value of life insurance, approximately; it says eighty thousand. What has happened to that asset?

A. Mr. Schroder, since that time I have had to borrow all I could on my insurance.

Q. Then there is quite a difference in your financial picture then and your financial picture since the Saturday Evening Post article came out?

A. Yes, sir; there is quite a bit of difference in my financial status.

Mr. Schroder: Let me check, Mr. Cody, and see if I have another question here.

[fol. 805] The Court: Just a moment. I think he wanted to confer with them.

Mr. Cody: Okay.

Mr. Schroder: I don't think I said I was through, yet. Just a minute.

The Court: Just a moment; he is not through yet.

By Mr. Schroder:

Q. This so-called crack block that you were describing, what is the present situation of that so-called block insofar as it being legal or illegal today is concerned?

A. Mr. Schroder, I would never have made the call to Florida State except for the benefit of the University of Georgia, because—

Q. That is not my question. Is that block today legal or illegal?

A. It is legal if the blocker has his head in front of the man he is blocking. Therefore, in explanation, Mr. Schroder, I would like to say I kindly felt I was fooling with someone else's business, namely, Florida State's, and I did it for the University of Georgia.

Q. In any conversation, without regard to what month it took place in, that you have ever had with Frank Scoby, has there ever been discussed between you and him betting or gambling or anything to do with the outcome of any contest involving the University of Georgia?

[fol. 806] A. Absolutely not.

Q. To your knowledge has Frank Scoby, without regard to what year it might be, ever placed any money on the outcome of the game engaged in by the University of Georgia?

A. I am sure he has not.

Q. To your knowledge has he ever bet any money on the outcome of any game, no matter whether Georgia was in it or not?

A. Not to my knowledge.

Mr. Schroder: You can examine.

Recross examination.

By Mr. Cody: ✓

Q. Coach Butts, you referred a moment ago to this Georgia International Life Insurance Company Stock.

A. Yes, sir.

Q. Did you know that at the date of that statement that stock was worth seven dollars a share?

A. No, sir; I did not know that.

Q. Did you know what it was worth?

A. No, sir. I know what I paid for it, sir.

Q. What?

A. Five dollars a share.

Q. Did you know that it is worth thirteen dollars a share now?

Mr. Schroder: If the Court please, it is worth more than that.

[fol. 807] The Court: It's twenty-two dollars a share today.

By Mr. Cody:

Q. When did you sell it?

A. I don't know, sir. It was sold by Goodbody and Company in Athens, Georgia, I think.

Q. When?

A. It was—when, I don't know the date, sir.

Q. You made a nice profit on that, didn't you?

A. Yes, sir; bought it at five and sold it at something; I don't know what it was.

Q. You sold it around thirteen, didn't you?

A. I am not sure, Mr. Cody.

Q. Well, now, Mr. Schroder was trying to illustrate to the Court that by selling this stock you hurt your financial statement, but on the contrary, you helped it, didn't you?

Mr. Schroder: I don't believe counsel has stated what I was demonstrating.

The Court: Let's don't put it in that way. I think he can ask him questions, not in the form in which he asked it; I agree with you, Mr. Schroder.

By Mr. Cody:

Q. Well, if the sale of that stock changed your financial condition, it bettered it; isn't that true?

A. Yes, sir; Mr. Cody,—

Q. That is all I wanted.

[fol. 808] Mr. Schroder: Let him answer your question.

The Witness: If you are trying to prove I am a poor business man, I am with you a hundred per cent.

By Mr. Cody:

Q. Well, that is not exactly what I am trying to prove, Coach Butts.

A. Well—

Q. You said—you said on the witness stand that you are now insolvent.

A. That is not hard to find out, sir.

Q. Who was it that got you in this Orange River Groves deal?

A. Mr. Cody, the Orange River Groves, Incorporated, was started by a building corporation called Jones and Frederick in Coral Gables, Florida. I thought it was a good opportunity, and I would have to be frank with you in telling you that I put more into it than I expected in trying to protect people who had bought contracts in that company. I was unselfish in that.

Q. Now, when you—when you signed this financial statement that we are discussing you named four banks that you owed money to. You left out the Bank in Chicago. Was that Mr. Williams' mistake or yours?

A. Mr. Cody, I cannot be sure, but at that time I do not believe I owed the Bank in Chicago.

Q. What about—what about a bank in Knoxville? You left that out.

A. Mr. Cody, that loan was effected at a more or less [fol. 809] recent date and endorsed by a wealthy gentleman living in Knoxville, Tennessee.

Q. What about this bank loan at Bridgeport, Pennsylvania? You left that out. Is that Mr. Williams' mistake or yours?

Mr. Schroder: Is there any evidence that that was a loan outstanding at that time, or is Mr. Cody testifying again?

The Court: I will let him ask that, Mr. Cody; I will let him ask him if it wasn't outstanding, and Mr. Butts can say yes or no or he doesn't remember.

The Witness: Mr. Cody, I don't know why, but I will try to explain. This—I have a contract with a canning company in Bridgeport, Pennsylvania.

By Mr. Cody:

Q. For what purpose?

A. For the purpose of canning ~~Coco-Colas~~ in the Philadelphia area, and this loan, when arranged, was supposed to be paid from the income from the royalties that I would receive on each case of canned Coca-Colas, and I think it is one penny per case.

Q. But you did sign the Bridgeport loan?

A. Yes, sir; endorsed by Mr. Lewis Tose, T-o-s-e.

Q. Coach Butts, haven't you had a loan outstanding for several years and prior to the time this statement was prepared that was payable to the Northside Bank at Jacksonville, Florida?

A. That loan, Mr. Cody, is less—I don't know the date of the loan.

[fol. 810] Q. But it was prior to this financial statement, wasn't it?

A. I do not know, sir.

Q. Well if—can I ask you who endorsed that loan?

A. Mr. Lewis E. Wolfson.

Q. Don't you know that that loan had been outstanding for about a year before this financial statement was prepared?

A. Mr. Cody, I am not sure about date.

Q. As a matter of fact, Coach Butts, you owed considerable more money than is disclosed by this financial statement as of the date of that statement; isn't that true?

A. I am not sure. You seem to know more about it than I do, sir.

Q. Well, you should know more about it, though, shouldn't you?

A. Yes, sir.

Q. Now, since the date of this financial statement, which is July 17, 1961, you drew your salary from the University

up until the time you resigned, they have paid you that, haven't they?

A. Yes, sir; they paid me through February of this year.

JOHN CARMICHAEL called as a witness on behalf of the Plaintiff, after having first been duly sworn, testified as follows:

Direct examination.

By Mr. Lockerman:

Q. Will you state your name please, sir?

A. John Carmichael.

[fol. 811] Q. Where do you live.

A. 4392 East Brookhaven Drive, Atlanta.

Q. Speak as loud as you can so that counsel back here can hear you.

A. All right, sir.

Q. How long have you lived in Atlanta?

A. All my life; I was born in Atlanta, sir.

Q. What business are you in?

A. I am in the real estate, insurance and sales promotion business.

Q. Mr. Carmichael, do you know George Burnett?

A. Yes, sir.

Q. How long have you known him?

A. Since 1960.

Q. Have you had any business connections or dealings with him?

A. Yes, sir.

Q. Directing your attention to the period back to the time of September 13, 1962, were you and George Burnett connected in in any kind of business together?

A. Yes, sir.

Q. Will you state briefly what that type of business was?

A. It was a business that I owned. The name of the business was the Institute of Oral Hygiene. It was—

Q. Did that have to do with toothbrushes and—

A. It was a sales agency for the sale of a toothbrush sterilizer.

Q. Did you have an office for use in connection with that business?

A. Yes, sir.

Q. And where was it located?

[fol. 812] A. At Number 72 Eleventh Street.

Q. That was here in Atlanta?

A. Yes, sir.

Q. Prior to that particular association, had you been in any business association with George Burnett?

A. Yes; he had been working for me for about a year.

Q. In some other business connection?

A. Yes, sir. He had been working for me as an insurance agent for Foundation Life Insurance Company, which I was district manager for Foundation Life.

Q. You were the district manager for Foundation Life, and he worked for you?

A. Yes, sir.

Q. Did you get a leave of absence or something?

A. Yes, sir; and in the last part of June of '62, we both got a leave of absence from the company.

Q. Now, this Institute of Oral Hygiene, was that your company?

A. Yes, sir.

Q. Directing your attention further to the date of September 13, of 1962, do you happen to remember that date?

A. Yes, sir.

Q. Do you recall approximately what time you arrived at your office on that date?

A. Well, I was a little late getting there that morning, usually got there about 9:00 o'clock, but that morning I had a dental appointment and I got there about 10:30.

Q. About 10:30?

[fol. 813] A. 10:30 or 10:35; somewhere right in there.

Q. Did you have in your offices there that you have referred to, an office that was more or less your office?

A. Yes, sir; I had an office.

Q. Private office?

A. Yes, sir; private office.

Q. With a desk and phone on it?

A. Right, sir.

Q. When you went into the office that morning, was George Burnett there?

A. Yes, sir.

Q. Will you state to the Court and Jury just what you found with reference to George Burnett when you arrived at your office that morning?

A. Well, when I went in the reception room our secretary hadn't come to work, and she didn't come to work all day that day, but I walked on in the reception into my office, and Mr. Burnett was sitting at my desk, and he had the telephone to his ear, and when I walked in he put his finger to his mouth like this, and I turned around and walked out.

Q. Will you turn to the Jury so they can see?

A. I turned directly around and walked out.

Q. Will you show the Jury what you meant by the motion of your hand?

A. Well, he had the phone to his ear, and when I walked in, he took his finger and put it to his mouth like this, and I turned right around and walked outside the door, and I sat—there's a little secretary's desk right outside the door, —I had a seat there and started looking through the morning mail.

Q. Now, the secretary's desk that was just outside the door, I assume you mean the door of the office where he was seated at your desk?

[fol. 814] A. That's correct, sir.

Q. Approximately how far, now, from the desk where he was seated, was the secretary's desk where you went and sat down?

A. Well, it was about—actually two desks, wasn't over three feet apart, if you got down to measuring the distance between the desks, but there was a wall separating them and a door in the corner, so I guess if you had to walk

around it, it would be six feet from one desk to the next desk.

Q. The door, then—

A. Six or eight feet.

Q. —was open in to the office where he was seated?

A. Yes, sir.

Q. And so you were about six feet from—six or eight feet, walking through that door, to where he was seated?

A. Yes, sir.

Q. I believe you stated there was no secretary there. Was anyone else in the office?

A. No, sir; not that day, no. She didn't work that day.

Q. Was there any sort of commotion or noise or disturbance going on?

A. No, sir; not at all.

Q. Now, approximately how long after you walked to the door where he was seated in the office and then turned and went back to the secretary's desk, about how long was it before anything happened with reference to you and George Burnett?

A. Well, I would say approximately five or six minutes.

Q. During that five or six minutes, was there any conversation by George Burnett over the phone that he was listening in on?

A. No, sir.

Q. Was there anything said by George Burnett to anyone into the receiver of that phone?

A. No, sir.

Q. While—after you got there?

A. No, sir.

Q. What was the first thing, then, that was said by George Burnett after you sat down to that desk, and after you had gotten there?

A. Well, he called my name.

Q. And when he called your name, what did you do?

A. I got up and went into my office.

Q. Relate to the Jury what George Burnett said to you after you went into the office and the desk where he was seated?

A. He said: "John?"—and he called my name,— "John?" I said, "Yes". And I got up and went into the office. I said, "What is it, George?" And he just said, "I heard a conversation between Coach Wally Butts and Coach 'Bear' Bryant." He says, "Seems funny to me that one coach or athletic director would be calling another one before game time." And he said, "I made some notes about it." And he had these notes in his hand, and he proceeded to tell me a little bit about the conversation.

Q. All right, sir. Now Mr. Carmichael, were you in a position to where you could have heard anything that George Burnett would have said to, into that phone receiver, had he said anything?

A. Yes, sir; if he had said anything at all I would have heard it.

[fol. 816] Q. Now, this article of the Saturday Evening Post of March 23 states this, and I quote, with reference to what Burnett is supposed to have heard. Let me show you, Mr. Carmichael, this reproduction of the Saturday Evening Post article which states in the second column, on Page 81. "Suddenly,"—talking about Burnett—"he heard an operator's voice. 'Have you completed your call, sir?' Burnett stated. 'Yes, operator. By the way, can you give me the number I was connected with?'" Did you hear George Burnett make any such statement to any operator on the phone at that time?

A. No, sir; and he didn't make it.

Q. If he had, you could have heard it?

A. That's right, sir.

Q. The next thing I read from here is: "The operator supplied him with a number in Tuscaloosa, Alabama, which he later identified. Burnett—" Then, going on down—"Burnett then dialed Jackson 5-3536, the number he originally wanted. This time the call went through normally, and he reached a close friend and former Business asso-

ciate named Milton Flack." And it quotes Burnett as saying: "Is Wally Butts in your office now, Milt?" Burnett asked, and it quotes Flack as saying: "Well; he's in the back office making a phone call, I think. Here he comes now." Did George Burnett make any statement over that phone to Milton Flack, or anyone else, as stated in this Post article?

A. No, sir; he did not.

Q. If he had, could you have heard him?

A. Yes, sir.

Q. This article comes down—no, it's on the first column, Mr. Carmichael, on Page 81 of this article, and states here, after referring to the claim that Burnett heard the operator [fol. 817] say Coach Bryant was on the phone ready to speak to Coach Butts, then—"Hello, Bear," Butts said." Then it goes down to say, "As Burnett listened, Butts began to give Bryant detailed information about the plays and formations Georgia would use in its opening game eight days later." After you started to talking with George Burnett, when he called you into the desk there where he was seated, did he tell you at that time, which was moments after it—after he had listened on this conversation, that Butts had given to Bryant detailed information about the plays and formations Georgia would use in its opening game eight days later?

Mr. Cody: Your Honor, I am going to object to this form of questioning. I think he can ask the witness what Burnett said, what he heard.

The Court: Yes, sir; I agree with you. I think you are leading your witness, Mr. Lockerman. I think you can ask him what was said, but you can't suggest to him what his answer might be. I sustain the objection.

Mr. Lockerman: All right, sir.

By Mr. Lockerman:

Q. Will you state to the Jury just what George Burnett said to you as to what he had heard in the conversation that he claimed to be listening to?

A. Well, he said that Coach Wally Butts had called Coach Bear Bryant and that he had got hooked up in the conversation and that in the conversation Coach Butts [fol. 818] had said that some football player, and I have forgotten the name of the player because it didn't—don't strike a bell with me, was a great football player; and also the statement he made to me was that Coach Butts said that Georgia had two new coaches, and the Coach Bryant—they talked a few minutes, and Coach Bryant asked him if he was going to be home Sunday. Now, outside of that, there was nothing else particularly involved in it, except the general conversation which he admitted to me between the two coaches.

Q. General conversation about what?

A. About football in general.

Q. Yes, sir. And was that what Mr. Burnett told you at that time, moments after the conversation?

A. That's right, sir, except he did add a little bit more than that. He says: "It seems funny to me that an athletic director from one school would be calling another school before a football game." And he said, "You think we should bet anything on this game?"

Q. Who? Was that Burnett said that to you?

A. Yes, sir.

Q. Whether you thought that the two of you should bet anything on that game?

A. That's right, sir.

Q. That was his statement?

A. That was his statement to me.

Q. All right, sir; what did you say with reference to that?

A. I said: "Well, George, from what you tell me, it's nothing there to lead me to believe you would know who to bet on. Do you know who you'd bet on? Was there anything said to lead you to believe that there would be some favorite in the game?" And he said, "No". I said, "Well, [fol. 819] from what you tell me, I can't judge that either, so I think the best thing we should do is forget it."

Q. Was anything else said about that conversation until sometime, say, later in the afternoon of that day?

A. Not after that. There was nothing else said about it until about, oh, I guess roughly about 2:00 o'clock that afternoon.

Q. Were you still at the office about 2:00 o'clock, or 2:30 that afternoon.

A. Yes, sir.

Q. What brought about something else being said about it, about 2:00 or 2:30 that afternoon?

A. Mr. Milton Flack came by the office.

Q. Let me ask you there, who is Milton Flack?

A. Well, he's a gentleman that was the President of Sterilray, and at one time Mr. Burnett had worked for him in the capacity of sales agent for Sterilray, for this same toothbrush sterilizer.

Q. Had you been—did you have some previous business connection with Mr. Flack, also?

A. Well, the only other business I had had with Mr. Flack was when Mr. Flack was hired in the Public Relations Department, United American Life Insurance Company while I was on the Board of Directors of that company.

Q. You were on the Board of Directors of United American Life Insurance Company?

A. Yes, sir.

Q. Yes, sir.

A. And he was hired as a public relations man for the company.

Q. All right, sir. Going back to that afternoon, then, on September the 13th, you indicated that Milton Flack [fol. 820] came to the office of Oral Hygiene. Relate what took place when he arrived.

A. Well, we talked for a moment or two, and then George, Mr. Burnett, rather, proceeded to tell Mr. Flack about the same thing he had told me that morning in regard to the conversation that he said he had heard between Coach Butts and Coach "Bear" Bryant, and he asked Mr. Flack the same question that he had asked me earlier in

the morning. He say, "What do you think about putting a bet on the game?" Mr. Flack asked him about the same thing that I did, too, and told him that he didn't think there was anything to it, and that—he asked him if he knew which side to bet on, and he said, "No." And he said, "Well, I don't know either." And he told him just about the same thing I did, and told him he didn't see any way to bet on it, or wouldn't know which way to bet on it, and told him that he thought the best thing to do was to forget about it.

Q. And as far as you are concerned—

A. But—excuse me. He had also told him this, though, Mr. Flack told him that—he said, "What time was that call?" And he told him it was about 10:30 in the morning, and he said, "Well Coach Wally Butts was up at the office of Communications International this morning."

Q. Is the Milton Flack telling George Burnett that Coach Butts was at the office of Communications International that morning?

A. That's right, sir.

Q. Had—up to that moment, had George Burnett said anything to you or to Milton Flack indicating that he had any idea—

[fol. 821] Mr. Cody: Your Honor, that is the same objection. Now, Mr.—

The Court: Yes, sir; I think you are leading your witness, Mr. Lockerman. I sustain the objection.

Mr. Lockerman: All right, sir.

By Mr. Lockerman:

Q. Had George Burnett—will you state whether or not George Burnett had said anything to you or to Milton Flack—

Mr. Cody: Same objection, Your Honor; I think—

The Court: Yes, sir.

By Mr. Lockerman:

Q. What, if anything, did George Burnett say to you or Milton Flack concerning where Wally Butts was?

A. Well, he didn't know where Wally Butts was, I don't believe; if he did, he didn't say anything to either one of us about it, and, in fact, Mr. Flack is the one that told him where Coach Wally Butts was that morning.

Q. All right, sir.

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[fol. 822] (Atlanta, Georgia; Tuesday, August 13, 1963, 9:30 a. m., in Chambers.)

EXCEPTIONS AND RULINGS THEREON

The Court: Mr. Cody, I believe you stated you wanted to make certain exceptions in the record, and I think it would be better to make them outside, and I want you to preserve every right you have got, and I thought this would be the proper time.

Mr. Cody: I have understood from the very start, the way it should be done so as not to ask any questions that prejudicial to this Plaintiff, I mean, the question, the answer to which would be inadmissible.

The Court: All right sir; you just proceed where we can get it on the record.

Mr. Cody: We wanted to show, Number one, by Mr. Bolton, J. D. Bolton, that telephone calls to the extent of twenty-eight hundred dollars were made by the Plaintiff and charged to the University of Georgia, which calls were made between October, 1961, and February 1, 1963.

The Court: Is that—

Mr. Cody: That these telephone calls which were charged to the University were not known to the University until an investigation was begun in the latter part of 1962, that [fol. 823] these calls involved people of questionable character, one of which was a woman by the name of Evelyn

Lindsay, and that in excess of three hundred of these calls were to her.

The Court: Well, now, are you through?

Mr. Cody: That is one time; yes, sir.

The Court: All right, sir; the Court feels that, and it is the ruling of the Court, that the fact that these calls were charged to the University are irrelevant to the issue at hand. Now, I have permitted you to— The Court has permitted you to ask questions in regard to Mr. Scoby.

Mr. Cody: Yes, sir.

The Court: I can see no relevancy in the calls to E. C. Lindsay.

Mr. Cody: Judge, I didn't think this morning we were going to get into a discussion of—

The Court: I was just making the ruling for the record. I thought it would be for the record, the Court's ruling would be on the record.

[fol. 824] Mr. Schroder: May I make a comment?

The Court: Let me get cleared up with Mr. Cody. What are you attempting to show here, Mr. Cody?

Mr. Cody: That none of these telephone calls were in connection with University business, and to charge these calls to the University—

The Court: You are simply attempting to show that the calls were charged to the University which were personal calls?

Mr. Cody: Right.

The Court: Well, I don't think that is relevant to the issue, and I rule it out.

Mr. Cody: All right, sir.

The Court: Go ahead.

Mr. Schroder: Your Honor—

Mr. Cody: Then, in that—

[fol. 825] Mr. Lockerman: May I make this statement for the record also, that if you have any names of suspicious characters, as you refer to, other than Evelyn Lindsay and Mr. Scoby, that I think the record ought to show who you have reference to other than those.

The Court: That is the reason I asked him the question, the basis of his contention that they were admissible and he said they were charged as calls to the University, personal calls, and I put my ruling on that basis. Now, if you have got another basis for them, let me hear from you.

Mr. Cody: Now, with respect to all of these matters which I am about to mention, I take the position that I have a right to cross-examine the Plaintiff on this subject in order to develop other evidence along the same lines and to substantiate the correctness of the records. Now, Number—maybe I should go into a little more detail.

The Court: All right, sir; go back to whatever detail you want.

Mr. Cody: —into the discussion of the admissibility.

The Court: Go into anything you want to.

[fol. 826] Mr. Cody: I want to prove by Evelyn Lindsay that she has traveled with Coach Butts on numerous occasions, some of which are to football games made by the University of Georgia, that he visited her in her room, that on two occasions he was seen drunk, that he paid her expenses on these trips and exhibited her to members of the football team, associating with her in their presence. I want to offer proof that on the night of Tech-Georgia, the Georgia-Georgia Tech game, 1961, in Atlanta, following that game Coach Butts had dinner with this woman and spent the night with her at the residence of Mr. Leon Froship here in Atlanta.

The Court: Well, I would say on that point, I don't think specific acts of misconduct are admissible, entirely disconnected with the libel action. I don't believe that a man has to come in and defend every act that he has ever committed during his whole life.

Mr. Cody: I think I understand that.

The Court: And for that reason I exclude the evidence and rule it out.

Mr. Lockerman: And, Your Honor, for the sake of the record, let me say this also in behalf of Mr. Butts.

[fol. 827] The Court: I don't want to defend every act I have ever done.

Mr. Lockerman: According to the testimony given by Evelyn Lindsay that he referred to, in each instance she said that whenever Coach Butts visited her in her room at any hotel or any other place, there was someone else present. Also, with reference to the—

Mr. Cody: Judge, let me interrupt him just a minute.

The Court: I am assuming everything he says is correct or could be correct, and I still think it is inadmissible and I rule it out.

Mr. Cody: I don't think we ought to get into a discussion in the brief time we have allotted here in the brief time—

The Court: I am letting you get your record for any appeal.

Mr. Lockerman: I do want the record to show that we take the position that the factual statements that he is making, that are incorrect in a number of instances as indicated, I know that he is not deliberately making incorrect statements, but I think if he checked the depositions carefully he would find that some of these statements of what he expects to prove are incorrect.

[fol. 828] Mr. Cody: I don't want to get into a discussion with him about what his position is.

The Court: That's all right. I want you to get your record straight, and I will rule on it.

Mr. Cody: I want to show that—

The Court: I might state this, that under the case of Kessler versus Best, which is a New York case which you cited, I read numerous cases which hold to the contra, and I believe that the majority of the cases, and also the case of Cox versus Strickland in the 101 Georgia is authority for my ruling.

Mr. Cody: I am not going to touch on the reasons for admissibility until I get through with these instances.

The Court: Go ahead.

Mr. Cody: I think I should state on this last point that we would undertake to prove by Mr. Hendry Ogdon the fact that Coach Butts did get drunk on the evening of the Tech-Georgia game in 1961 and spent the night with Evelyn Lindsay at this place. He, as well as Evelyn Lindsay, would be witnesses in that respect.

[fol. 829] The Court: All right, sir. I overrule—I exclude the evidence as being irrelevant and immaterial.

Mr. Lockerman: Let me say this; we take exception to that statement.

Mr. Cody: I understand you—

The Court: You don't need to take exception if I am ruling on it.

Mr. Lockerman: All right.

Mr. Cody: We expect to—we want to be permitted to prove that Coach Butts on a number of occasions during the time he was coach or athletic director visited the Domino Lounge in Atlanta in company with Evelyn Lindsay and several others, and also another nightspot called the Copá Cabana, at which places liquor was served and floor shows were put on, including—which shows included the so-called strip tease artists.

The Court: I rule that evidence out for the same reason as being irrelevant and immaterial to the issue involved. [fol. 830] Mr. Cody: We expect to prove not only by the records of the airlines but the records of the University of Georgia that Coach Butts traveled with Evelyn Lindsay to various places, Birmingham, Miami, Nassau, Chicago, Los Angeles, Lexington, Kentucky, one or two where they did not travel together there but on some traveled back together, that he bought her ticket and paid for it, and paid her expenses, and in most of those cases charged the airline transportation charges to the University of Georgia.

Mr. Lockerman: Your Honor, Mr. Butts is here, and I think he can state into the record—

The Court: I don't think he need state anything. Let's just rule on the facts.

Mr. Lockerman: That is not a true statement of fact.

The Court: Are you through?

Mr. Cody: No, sir. In connection with those—several of those trips, the airline tickets which were charged to the University of Georgia are under a fictitious name, an assumed name was used for Evelyn Lindsay, namely, E. C. Smith and E. Smith, and subsequently when he was confronted by one of the University officials with respect to these particular transactions he admitted his indiscreetness, that one of those trips was to Nassau with Evelyn [fol. 831] Lindsay, he and Evelyn Lindsay alone, and that he paid the entire expenses of that trip, and in connection with one of those trips he put Evelyn Lindsay up at the Phoenix Hotel in Lexington, Kentucky, arranged for her to be registered under the name of E. C. Lindsay and wife, and that the University of Georgia, all of that was put on University of Georgia bill and paid by the University of Georgia without knowing what it was for, who it was, that Coach Butts subsequently paid that bill and admitted that this involved Evelyn Lindsay, stating also that he, having already testified in this case by deposition, he doesn't know anybody by that name, E. C. Lindsay. We would expect to show by Dr. Bolton—by J. D. Bolton that previous to that he had instructed Mr. Bolton when confronted with this bill to send the bill to E. C. Lindsay at 50 Biscayne Drive, Northwest, Atlanta—Northeast, which is the address, the address of Evelyn Lindsay. I believe that's all on that point.

The Court: All right, sir. I rule that that evidence is irrelevant and immaterial to the issues involved.

Mr. Cody: I think I should mention for the record, Your Honor, that we would expect to prove those facts by the airline records. I don't think I mentioned that, by the hotel records themselves, two witnesses for the—two employees of the hotel having given their depositions and identifying the records, and we would also prove a part of those statements, records, by Mr. J. D. Bolton and also by the cross-[fol. 832] examination of Mr. Butts. If Your Honor thinks

I should at this time name the two employees, the employees of the Phoenix Hotel, I will put that in.

The Court: You do what you want to.

Mr. Cody: One of them is named Anderson, Mr. Anderson, and Mr. Bachelor, who have testified by deposition in this case and have identified these records. And by Mr. Tracy of the Delta Airlines who identified the transportation tickets and has also testified by deposition.

The Court: All right, sir. You ready? Is that all?

Mr. Cody: Yes.

The Court: All right, sir, I rule that evidence irrelevant and immaterial to the issues involved.

Mr. Cody: We expect to show by Evelyn Lindsay that she sent to California by plane in 1960 to the Georgia-California game, and that Butts paid for that trip, and visited her in her room while she was there at the hotel. We expect likewise to show by her that the Georgia-Auburn game in 1962, Butts paid her expenses to Columbus, Georgia, where she stayed at the Royston Hotel, and he paid her expenses there and transportation expenses. We expect to show by her that in Jacksonville in November, [fol. 833] 1962, at the Georgia-Florida game she stayed at the Robert Myers Hotel, and Butts paid her expenses there, and that he visited her in her room during her stay there, and also that he was—he was on one occasion doing that weekend drinking heavily. We expect to show by two of the University officials that Coach Butts bought from Boomershine Motor Company in Atlanta a new Pontiac and gave it to Evelyn Lindsay, which incidently embarrassed some of the University officials in that the retention title contract on that car was recorded in Athens, and a record of it published in one of the publications that are issued in Athens. I don't know the name of that publication; I don't have it at the moment now, but it was published, and we would expect to show he was confronted by one of the University officials about his indiscreetness in doing that, and that he told that official that he did not buy this car for Evelyn Lindsay but simply helped finance it tempo-

rarily for her brother. In that connection we would expect to show that insofar as we have been able to ascertain that she has no brother. We expect to show you—prove that Evelyn Lindsay has a private unlisted telephone number which Coach Butts has called on many occasions in excess of a hundred times during the period I mentioned heretofore, all of which calls were charged to the University and included in this twenty-eight hundred dollars. We also expect to show that Coach Butts has visited many times in Evelyn Lindsay's apartment on Biscayne Drive while he was coach and while he was athletic director at the University of Georgia, and made this known to others who talked about it, and caused common gossip to be spread about it, which has embarrassed the University of Georgia.

[fol. 834] The Court: All right, sir, is that all?

Mr. Cody: I believe that's all.

The Court: All right, sir, I rule that evidence is irrelevant and immaterial to the issues involved. All right, sir, anything further?

Mr. Cody: Let me see. I think I have—like also, in connection with this trip to Lexington, Kentucky, I expect to show that on the return to Atlanta from that city that Coach Butts was with Evelyn Lindsay and also on that plane were five football players on the University of Georgia team, and on that visit none of Coach Butts family was on that trip. We would expect to show by Coach Butts and by Evelyn Lindsay that in the purchase of the Pontiac, in addition to the Pontiac automobile he purchased for her he bought her a mink stole. Now, I want to—I want to perfect the record, Judge, if such need be done, with reference to these seven or eight questions I wanted to ask Coach Butts yesterday.

The Court: Let me rule on that. I rule on that last statement, what you intend to prove, that it is irrelevant, and immaterial to the issues involved. All right, sir, go ahead.

Mr. Cody: With reference to these several questions?

[fol. 835] The Court: No, sir; I haven't heard those.

Mr. Cody: I wanted to prove yesterday with Coach Butts on cross examination that he refused to answer these seven or eight questions, I may be wrong in the number, which I showed to Your Honor yesterday and which had to do with the time when he was in Atlanta round September 13th or whether or not he made any calls to Coach Bryant, undertaking, of course, to show by this evidence that he was evasive and—

The Court: I think I am familiar with the questions, and I—

Mr. Cody: That's right; you looked at them.

The Court: —informed you at that time you could ask him those questions. My recollection was that you stated that you wanted to show he would not answer the questions at the time the deposition was taken—

Mr. Cody: That's right.

The Court: —and my recollection was that he was advised by his attorney not to answer the questions—

Mr. Cody: That's right.

[fol. 836] The Court: And I couldn't see where any benefit would be derived. I assumed that if a party is represented by counsel, and those questions were not answered at that time, but I told—I informed you on yesterday that you could ask the questions again. If you are making any real issue on the point, I will permit you to ask Coach Butts why he didn't answer the questions or refused to answer them, and I think it comes back to the same thing.

Mr. Lockerman: Your Honor, let me make this statement into the record. The questions that Mr. Cody is stating that Coach Butts refused to answer, in which he did refuse to answer, were questions that were put to him on May 3, 1963 where there was pending before Your Honor certain motions—

The Court: Some interrogatories.

Mr. Lockerman: —with respect to the admissibility of the questions that he was seeking the answer to. Thereafter the Court ruled—

The Court: That he did have to answer.

Mr. Lockerman: —that he did have to answer, and that I have in my hand here the deposition that Mr. Cody resumed of Coach Butts on July 16th, 1963, at which time he put those questions to Coach Butts, and Coach Butts did [fol. 837] answer those questions, after Your Honor had ruled that he should answer them, and for him to come back now and seek to ask him questions, and he refused to answer on advise of counsel on May 3rd, but which he did answer on July the 16th, certainly doesn't illustrate anything.

The Court: Yes, sir. That was a disputed legal point, and I can't see how you could impeach your witness when the matter was—the matter was to be determined by the Court and was later determined by the Court, and thereafter the questions were answered.

Mr. Joiner: Of course, even if their legal position was correct—

The Court: Yes, sir.

Mr. Joiner: —Plaintiff had his right to waive the benefit and give the whole truth of the circumstances.

The Court: Mr. Joiner, if it was a legal question that had to be determined, I would certainly think witness should follow the advice of his counsel.

Mr. Cody: It is still a question for the Jury to determine whether or not it is trying to be evasive.

The Court: No; no, sir.

[fol. 838] Mr. Lockerman: That's right.

The Court: I don't think that is a proper method of impeachment or discrediting.

Mr. Cody: It is not under impeachment.

The Court: What is it under? What is the reason for asking it?

Mr. Cody: His demeanor on the witness stand. The Jury has a right to consider the trustworthiness of a witness.

The Court: That is what you are getting back to.

Mr. Cody: That's right.

The Court: Same thing that I said. I don't think that is proper, and I rule that out.

Mr. Cody: All right. We expect to—we will expect to prove by Coach Butts that he has testified that he does not know any person by the name of E. C. Lindsay. This, of course, comes under the heading of impeachment.

Coach Butts: Your Honor, I didn't say anything—
[fol. 839] The Court: We are just on a legal issue, Coach. Haven't we been over—didn't you go over that when we first started? Didn't you make—

Mr. Cody: We discussed it privately in front of Your Honor at the Bench.

The Court: I thought you started on that today.

Mr. Cody: No, sir.

The Court: All right, sir, anything further?

Mr. Cody: I would—I would propose to ask Coach Butts if he—if he is acquainted with—with his own reputation.

The Court: No; that is not the proper way to prove reputation.

Mr. Cody: Well, I believe that covers it.

The Court: The law sets out how you can prove reputation, and there are three specific questions—three specific questions, yes, and that is the way you can prove it, and that is the only way. I will let you prove it that way as the law provides, but you can't ask of the party, nor can [fol. 840] the party testify to his own good reputation.

Mr. Cody: Well, in order to perfect the record I would like to be permitted to ask him the further questions as to whether or not his reputation is good or bad. That is in the same category.

The Court: Well, I exclude that as being an improper question.

Mr. Cody: That's all I have.

The Court: All right, sir, anything further?

Mr. Cody: No, sir.

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JOHN CARMICHAEL, having resumed the stand, testified further as follows:

Direct examination (continued).

By Mr. Lockerman:

Q. Mr. Carmichael, when Court adjourned yesterday, I believe we were discussing the events of the afternoon of September the 13th, that took place in your office, the Institute of Oral Hygiene, after Mr. Flack arrived. I believe you had stated to the Jury that Mr. Flack told Mr. Burnett [fol. 841] about the fact that Wally Butts had been in the office of the Communications International that morning; is that correct? Have I stated that approximately correct?

A. That's correct, sir.

Q. All right, sir. Now, I believe you had also testified Mr. Burnett went over with Mr. Flack the same things that he had told you immediately after he had hung up the receiver from listening in on that conversation he claimed he heard; is that correct?

A. That's correct.

Q. Did he tell Mr. Flack substantially the same thing that he told you—had previously told you?

A. That is correct, sir.

Q. And what was the decision made, if any was made, about what to do, if anything, about that matter?

A. Well, Mr. Lockerman, I don't know whether you'd call it a decision was being made or not, but Mr. Burnett asked Mr. Flack approximately the same thing he had asked me in regards to betting on the game.

Q. Speak so counsel can hear you.

A. He asked Mr. Flack what he thought about placing a bet on the game, and Mr. Flack said, in brief, "Well, there's nothing there that would lead me to believe which side to bet on, and I think we had better not make a bet on either," or words to that effect, which is about the same thing I told him.

Q. Was that, in substance, what took place about the matter after Mr. Flack arrived?

A. That's right, sir.

Q. Of course, as you have stated, that was on September the 13th. Now, directing your attention to the date of [fol. 842] September the—the Monday morning following the game on September the 22nd, was anything said between you and Mr. Burnett on that day concerning this matter, and if so, what?

A. Well, on Monday morning I think that Mr. Burnett, to the best of my recollection, about the only thing was said was he said: "Well, John if we had bet on Alabama Saturday, we'd have won." That was Monday after the game had been played, now.

Q. Yes, sir. Now, from that date, the Monday following the game on the 22nd, did anything else occur about that matter between you and Burnett, or you and Flack, or you and anyone else until the date of January 30, of this year, 1963?

A. No, sir.

Q. Will you please relate to the Jury what occurred concerning this matter, if anything, on that date?

A. On January 30?

Q. Yes, sir.

A. Well, let me back up just a minute, Mr. Lockerman, with your permission, and say—

Q. All right, sir.

A. —we closed this business of the Institute of Oral Hygiene the latter part of October, and in November Mr. Burnett went back to work for the insurance company, and in December I went back to work for the insurance company, but Mr. Burnett was not working for me at this time. He had been put in another district before I went back, and I went back in December, and I didn't see too much of Mr. Burnett during the month of January because he wasn't working for me, but on the morning of January the 30th I went into the office of Foundation Life Insurance Company and I walked into the agency room

[fol. 843] and Mr. Burnett was in the agency room on telephone by himself. When he hung up the telephone he turned to me and he said, "John," he said, "I have got myself in an awful trap, and I don't know what to do about it." I said, "What do you mean?" He said, "Well, a few weeks ago I was talking to Bob Edwards,"—Bob Edwards is the Division Manager for South Georgia for Foundation Life, and he says, "I was talking to Bob Edwards, and I happened to mention to him that I heard a conversation back in September between Coach Wally Butts and 'Bear' Bryant, and he said he's a good friend of Johnny Griffith, or Coach Griffith, and I didn't know that he was going to run over there and talk to him, but," says, "he's went over there and talked to him about it, and next thing I know," he said, "They had me down talking to some of the Georgia officials, including an attorney and President of the college," and he says, "I've got myself in a trap here, and I don't know what to do about it."

Q. Now, following that conversation on that date with George Burnett, did you, yourself, do anything about this matter that day or that evening?

A. Well, I asked George that morning, I said, "George," when I was talking to him, "I don't know what you have told these people, but I want to ask you a question." I said, "did you say that I was there when you were supposed to have heard the conversation, or did I listen in on the telephone in the conversation?" And he said, "No, I did not". I said, "Well, I'm glad of that, because if you said I listened to the conversation, I'd have to say it's a lie." And that was, in essence, about all that was said about it there.

Q. Well, let me ask you this. Then, just to get down to the question that I have in mind, did you communicate [fol. 844] with Wally Butts at any time that day or that evening about the matter?

A. Well, that night I went home, and I told my wife about what had happened, and I says, "I just don't think it's right—"

Q. Well, now, don't go into conversation with your wife.

A. Okay. Well, anyway, the facts of the case is that I decided to call Coach Wally Butts and tell him about it.

Q. Well, let me interrupt you about it and ask, did you know Coach Wally Butts?

A. I have been an acquaintance of the Coach. I have never been a friend of the Coach, but I have known Coach in a casual way for about fifteen years.

Q. Who introduced you to Coach Wally Butts?

A. To the best of my recollection it was Coach Frank Leyhe from Notre Dame.

Q. About fifteen years ago?

A. Yes, sir; about fifteen years ago.

Q. All right, sir. Now did you—did you reach Coach Butts on the telephone on the evening of January 30, or any time during that night?

A. Yes, sir; I did.

Q. Where did you reach him? Where was he?

A. Well, I called his home in Athens and he wasn't there, and I finally, you know, they told me Coach was off on a trip, and he was in Philadelphia, I believe he was in Philadelphia, Pennsylvania, and I called Philadelphia, and he was in a hotel in Philadelphia but he wasn't in when I called, and I left my number for him to call me back, and he did that night.

Q. He called you back that night?

A. Yes, sir.

[fol. 845] Q. What conversation took place between you and Coach Butts when he called you back?

A. Well, I didn't know whether Coach Butts would know who I was or not, at first, so I told him over the phone who I was, and I asked him if he remembered me, and he said: "Yes, I do, John." And so then I told the Coach what Mr. Burnett had told to me on the morning of September the 13th, when he received the telephone call, and I told the Coach what Mr. Burnett had told me that morning on January 30th, what he had done, and the Coach said to me, he said: "Well, John, I appreciate you calling me,

but," he said. "I'll tell you this," he said: "I am sure there is nothing to it, because I don't know whether I called Coach Bryant or not, but I will tell you this," he said, "I talk to a lot of coaches, and I don't remember making a call on that particular day, but if I did," he says, "I will assure you there was nothing to it, because I would never do anything to hurt Georgia." And he thanked me for calling him, and it was a very short conversation. It only lasted three or four minutes at the most, and that was all there was to that conversation.

Q. Had you previously, at any time, said anything to Coach Butts about this matter prior to that time?

A. I hadn't even seen Coach Butts prior to that time.

Q. As a matter of fact, did you know Coach Butts socially, or did you ever visit his home, or he in yours?

A. I have never been to his home in my life, never met any members of the family in my life; he has never been to my home, and I have never been out with him socially.

[fol. 846] Q. Have you ever had any business transactions with Coach Butts?

A. One time in my life.

Q. Will you state what that was?

A. I believe it was in 1958, I organized a company, a corporation, rather, in the State of Georgia, known as the Coffee-Break Sales & Service Company. I believe it was a corporation; I believe that was the name of it. It was a business that was—it was organized for the purpose of selling coffee and hot chocolate out of vending machines in small locations, and I went to about twenty people who were prominent people, and I got these people to put two thousand dollars or fifteen hundred dollars apiece into this corporation to buy stock into it.

Q. Will you name some of the people?

A. Well,—

Mr. Cody: I don't think that is relevant, Your Honor.

The Court: Yes, sir; someone brought out about the Coffee-Break Company yesterday; I will let him go into it.

Mr. Cody: All right, sir.

The Court: Go ahead.

A. (By the witness) Dr. Chris. McLoughlin, who was killed in the Paris crash, was one of the people.

Q. Was he a practicing M. D. in Atlanta?

A. He was a practicing physician here in Atlanta. He was also, I believe, President of either the National Association [fol. 847] of Georgia Doctors' or an association of some kind. Mr. Wylie Moore, Jr. was one of the people in this. I was in Athens; I went to see Coach Butts, and Coach—I explained the situation to Coach Butts, and he said: "This sounds like a very good idea," and I says, "Of course, we'd love to have you come in. We believe it will make some money, and we believe that you could probably help us up this way, if we come up this way to distribute our machine." And he purchased some stock in the company. Another gentleman was Mr. Robert Hogg. I don't remember all the people, but I will tell you it was a pretty good bunch of people we had in it.

Q. I see, and he put some stock in it?

A. He bought some stock in this corporation.

Q. I believe there's been some testimony about a refunding of the money to Coach Butts reference to that stock; will you state what that is?

A. That's correct.

Q. What did you have to do with that?

A. Well, I was President of the corporation, and, of course, the people that put their money in this corporation, they didn't know anything about the machines. They put it in there because I told them it was a good deal, I believed, and I had a contract with a company that was manufacturing these machines, and they guaranteed to me to do certain things, and they did not live up to the specifications they were guaranteed to me for, so I broke my contract with the manufacturer on the machines after about three months' operation. I saw it wasn't going to do the job, and I called the stockholders' meeting, and I refunded

every penny of money to every stockholder that had purchased stock in this corporation, even though we had spent some of the money. I personally refunded every penny [fol. 848] of the money to every stockholder in the corporation that had put a penny in it, and gave Coach Butts and everybody else involved in it a check for the full amount they had put in the corporation.

Q. Now, that was some personal loss to yourself?

A. Yes, sir.

Q. All right, sir. That included, of course, as you say, Coach Butts?

A. Yes, sir.

Q. Now, you testified a moment ago that you were introduced to Coach Butts about fifteen years ago by Coach Frank Leyhe of Notre Dame. Will you explain to the Jury how Coach Leyhe happened to introduce you to Coach Butts?

A. Well, at this time I was operating a restaurant on West Peachtree about a block from the Biltmore Hotel, and Coach Rupp and Coach Leyhe and a lot of other coaches who brought their teams to Atlanta, needed a good place for these people to eat, for the players to eat, and I was feeding quite a few football teams, and as a matter of fact, I was feeding most all the high school teams when they had their tournaments here in Atlanta. Some of the personnel I knew. Sid Scarborough, who was Director of Athletics, I believe, for the City of Atlanta, and a lot of these people eat with me, and I would feed the whole teams, and it happened that Coach Frank Leyhe and some of his players there, and I was feeding them dinner or lunch, I don't remember whether it was dinner or lunch, but anyway, I think I had met Coach Frank Leyhe, of course, when he came in and made arrangements for it, and we were serving these players a meal and Coach Butts came in and Coach Leyhe asked me if I knew Coach Butts. I said, "I have never had the pleasure." I shook [fol. 849] hands with him, and if I remember right, Coach Butts sat down and had dinner with them.

Q. All right, sir. Now, you have read the article in the Saturday Evening Post that is the subject matter of this law suit, haven't you?

A. Yes, sir.

Q. Will you state to the Jury whether or not there is anything in that article that George Burnett told you he had overheard during the conversation with—that he listened in on, which he claims he listened on?

A. Well, the only thing that I can see in that article that even comes close to what Mr. Burnett told me was he did mention the fact, of course, that he had heard the call. He did mention the fact that—there was a mention that he made to me that some football player was a great football player. I do not remember the name of this player, however. And also the fact that Coach Bryant asked Coach Butts if he was going to be home on Sunday. And outside those three things, there is nothing in that article that appears—pertains to the conversation that Mr. Burnett had with me that morning.

Q. I believe you stated that all that Burnett said about the—about Sunday, the Sunday matter, was that Coach Bryant asked Wally if he was going to be home on Sunday?

A. That's correct, sir.

Q. And is that the extent of what he said about that?

A. That is exactly it and nothing more.

Q. All right, sir. Speaking of people that you have discussed this matter with, have you at any time ever [fol. 850] discussed this matter with a lawyer here in Atlanta by the name of Pierre Howard?

A. No, sir; I have not.

Q. You know Mr. Howard?

A. Yes, sir; very well.

Q. But you have never discussed this matter with him?

A. No, sir.

Q. Mr. Carmichael, going back to the date of September the 13th when George Burnett called and asked you to come to the desk where he was seated where he had been listening in on this phone, I believe you testified yesterday

that he had some notes on the desk there in front of the two of you; is that correct?

A. That's correct. I sat down beside the desk and he had some notes he had in his hand.

Q. Did you see those notes?

A. Yes; I did.

Q. Do you think you would recognize those notes if you saw them again?

A. I believe I would, sir.

Mr. Lockerman: May I have the notes that were introduced as Defendant's Exhibit No. 12?

By Mr. Lockerman:

Q. I hand you what has been represented in this case by Mr. George Burnett to be the notes that he claims that he made during that telephone conversation while he was actually engaged in listening to it. Now, they have been put into evidence by the Defendant and marked as Defendant's Exhibit No. 12. I ask you, please, sir, to look at them [fol. 851] carefully and state whether or not those are the notes that George Burnett had immediately following the telephone conversation when he called and asked you to come in and you discussed the matter with him?

A. No, sir; these are not the same notes that Mr. Burnett handed me.

Mr. Lockerman: All right, sir; you may cross-examine.

Cross examination.

By Mr. Cody:

Q. Mr. Carmichael, I believe you started out our testimony by saying you were in the real estate insurance business?

A. That's correct, sir.

Q. You don't have a license issued by the Georgia Real Estate Board, do you?

A. No, sir; But I own twenty percent of the stock in a real estate development company and I am vice-president of the company. It is well rated in Dun & Bradstreet.

Q. Well, answer my question.

A. I believe that puts me in the real estate business.

Q. Answer my question, then, without arguing.

A. I do not have a real estate license.

Q. You don't have an insurance license, do you?

A. Yes; I do.

Q. Issued by the—

A. State of Georgia.

Q. Insurance Commissioner?

A. Yes, sir.

Q. When was that issued to you?

[fol. 852] A. It was issued January of this year, sir. It's signed by Mr. Bentley; I don't remember the exact date.

Q. Do you remember when your deposition was taken?

A. I don't remember the date; no, sir.

Q. About in June of this year?

A. Yes, sir.

Q. Will you state whether or not this is a correct transcript of the question and answer that was transcribed in this deposition?

Mr. Schroder: What page are you reading from?

Mr. Cody: Page 8.

Mr. Schroder: Sir?

Mr. Cody: Page 8.

By Mr. Cody:

Q. "Did you see the notes which Burnett said he made of the conversation?" Answer: "Yes, sir." Question: "Did you examine them?" Answer: "I did not take them in my hand, no, sir. He sat back down at my desk and I sat down in a chair next to it, and he was telling me—he laid these notes out and he was telling me the things I

just mentioned. He laid the notes down on the desk. They were laying there and I did see them, but I did not pick them up and look at them."

[fol. 853] A. That's true, sir.

Q. Well, if you didn't look at them—

A. I did look at them.

Q. You testified you—

A. I said I didn't take them in my hand. I saw the notes, sir.

Q. But you said; in answer to the question that I just read you, that "I did not pick them up and look at them."

A. I also said—

Mr. Schroder: That is what he's saying now.

The Court: That's all right; you can bring it out on redirect examination.

A. (By the witness) I also said I saw them in the deposition, sir, but I didn't say I picked them up in my hand and looked at them.

Q. What was the name of this business you had on Peach-tree?

A. It was Peach Blossom Inn, sir.

Q. Did you even operate a business known as "The Gypsy Room?"

A. Yes, sir.

Q. Where was that?

A. It was at two locations. When I originally opened it, it was on the Clermont Hotel.

Q. On Ponce DeLeon Avenue?

A. Yes, sir. And then I closed the business in the Clermont hotel, and I moved to Pine Street, to Number 26 Pine Street.

Q. Well, now, let's back up just a minute. What sort of a business was that?

[fol. 854] A. It was a supper club, sir.

Q. Where you served liquor?

A. Well, we served whiskey; yes, sir.

Mr. Schroder: If the Court please, what relevancy could that have to this case, whether he operated a supper club, or whether or not he did or did not sell whiskey.

The Court: Well, he went in, Mr. Schroder, to the type of businesses he operated, and the fact—if he had certain football—I will let him continue with that line, if he can connect it up.

By Mr. Cody:

Q. Did you have a floor show in that business?

A. Yes, sir; I did.

Q. Coach Butts ever visit you at that place of business?

A. I don't believe he did; no, sir.

Q. You are not sure?

A. Well, I couldn't swear to everybody that's ever been in there, but I never saw him there.

Q. You don't remember seeing him there?

A. No, sir.

Q. Where was it you said you moved that business to?

A. I moved to Number 26 Pine Street, between the Peach-trees, but I kept the same name. The business operated under the same name.

Q. Did you ever operate a business by the name of The Circus Lounge?

A. Yes, sir; I did.

Q. Where was that?

[fol. 855] A. It was at the same location. The building caught on fire at The Gypsy Room, and we remodeled the business, remodeled the building, and when we did we put a different motif in it and called it The Circus Lounge.

Q. Is that the business on Pine Street between the two Peachtrees?

A. That's correct, sir.

Q. Is that business in operation now?

A. I believe somebody is operating it; I don't know who.

Q. You don't have anything to do with it now?

A. No, sir; I never have been in it since I left.

Q. Did you ever operate the Wieuca Inn?

A. Yes, sir.

Q. Was that your business?

A. Yes, sir; I owned it.

Q. Did you ever operate a business on the Marietta Highway known as the Casa Rio?

A. On the old Marietta Highway. Yes, sir.

Q. That in business now?

A. No, sir; I don't believe it is.

Q. Did you ever operate a business known as the Rhythm Ranch?

A. No, sir; I did not.

Q. You ever heard of Rhythm Ranch?

A. Vaguely. I have heard the name; I don't even know where it's at.

Q. You say it was about fifteen years ago that you met Coach Butts?

A. I would estimate it to be about that; yes, sir.

Q. Have you ever— Did you ever get in any trouble, Mr. Carmichael?

[fol. 856] Mr. Lockerman: If Your Honor please—

The Court: That is not the proper way to prove that, Mr. Cody.

By Mr. Cody:

Q. Have you ever been convicted of a crime?

Mr. Lockerman: Your Honor, please, I don't think that is the proper way.

The Court: No, sir. Let the Jury go out.

(Whereupon the Jury retired from the court room at 10:44 a.m.)

The Court: Mr. Cody, my recollection of the law in regard to impeachment, I think you can ask him whether he's ever been convicted of a crime involving moral turpitude—

Mr. Cody: Yes, sir.

The Court: —and if he admits he has, then you can, or whatever the particular crime, you can refer to the particular crime. I don't know what the nature of your ques-

tion is, what crime you are talking about, and then if he admits it, then there is nothing further; if he denies it, you can introduce a certified copy, if such is in existence. [fol. 857] The Witness: Your Honor, may I ask a question?

The Court: No, sir. May I see that when—

Mr. Schroder: I have never seen it before either, Your Honor.

The Court: But a nolo contendere is not admissible.

Mr. Cody: It is not a nolo contendere, Your Honor.

The Court: And it has to be a crime involving moral turpitude, which would be a crime charged for more than a year and a day.

Mr. Cody: It involves moral turpitude.

The Court: I don't know what the law of Ohio is in regard to this particular crime which he was charged with.

Mr. Lockerman: He'd have to prove that.

Mr. Cody: It's a charge—it's a charge of larceny. Our courts have held that it involves moral turpitude, a charge of larceny.

[fol. 858] The Court: Well, under the Ohio statute, did —was it a misdemeanor or was it a felony?

Mr. Cody: Well, there are—we can furnish you some Ohio authorities on the subject.

The Court: Well, it's difficult for me to keep up, certainly, with the Ohio law.

Mr. Cody: I understand that.

The Court: I just don't know. Until I am convinced—you know the rule; it's got to be a crime which would involve more than a year and a day.

The Witness: It wasn't, Your Honor.

Mr. Cody: Doesn't have to be a felony, Your Honor. Your Honor is mistaken about the length of time of the service of a sentence as having any connection with moral turpitude. The question—the question involved is simply one of whether it does involve moral turpitude, and according to the decisions in Georgia, larceny is—

The Court: The crime with which he is charged has got to be a crime which involves a sentence of more than a

[fol. 859] year and a day. Now, if there is a plea of guilty, or if there is a conviction, then it is admissible. I agree with you.

Mr. Cody: Well, there is a conviction, as Your Honor will see by that record, but not a sentence of a year and a day. I think Your Honor is mistaken.

The Court: You don't have to have a sentence, but the crime with which he is charged must have been a crime which was punishable by more than a year and a day.

Mr. Cody: I have an Ohio decision, Your Honor, if you'd like to take a look at it.

The Court: Let me hear it.

Mr. Lockerman: Your Honor, may I be heard on that just a moment?

The Court: Yes, sir; I will let you be heard on it, too.

Mr. Lockerman: The only way he can prove a statute of Ohio is to have a certified copy of it, properly certified, of the law.

The Court: I know that. I don't know whether he is required to go that far or not on proving statutes. If he was proving the statute which he was suing on, I agree with [fol. 860] you, but what I am concerned with is whether or not this particular crime involves—was a crime involving moral turpitude.

Mr. Cody: Under the Georgia law, Your Honor, it would be, and we—

The Court: We don't have such a law under the Georgia law. We have petty and grand; this is petty.

Mr. Cody: Well, it's larceny under our law. This is where he is giving evidence, and this is where the Courts of this State have to decide whether it involves moral turpitude or not. I offer it for that.

The Court: What I want to know, is the Ohio statute of this crime which is charged here, did it involve—could he have been sentenced to more than a year and a day under that crime. That's all I want to know.

Mr. Cody: That's not the—that is not the purpose of offering the evidence in this respect.

The Court: What is it?

Mr. Cody: We say under Georgia law it involves moral turpitude.

[fol. 861] The Court: Sir?

Mr. Cody: We say that under the Georgia law it involves moral turpitude, in which event he can be impeached on proof of conviction. Now, that is the purpose for which we are offering it.

The Court: I agree, if you can show that it involves—it was a crime involving moral turpitude, under the law of Ohio, it would be impeachable.

Mr. Lockerman: Yes, sir.

Mr. Cody: You can prove—you can prove the law of Ohio by the decisions of the Ohio Courts.

The Court: Read me what the Ohio Courts say.

Mr. Cody: In the case of Burch, in re Burch, which is in the 54 Northeastern 2d., at Page 803. "If a crime is one involving moral turpitude, it is because the act announced by the statute offends the generally accepted moral code of mankind."

And here is the definition under Ohio law of moral turpitude, in the Bostwick case, quoted in the 181 Northeastern 1095. "Moral turpitude is defined as an act of baseness, violence or depravity in the private social duties which man owes to his fellowman or to society in general, contrary to the accepted and customary rule of right and duty between man and man."

Moral turpitude is otherwise defined by another court as "Anything done contrary to justice, honesty, principle and good morals."

The Court: Well, a misdemeanor could be that, but it's still got to be a felony.

Mr. Cody: It could be but I think Your Honor is wrong about the felony. If Your Honor should be right on that question, then it wouldn't be—then it wouldn't be admissible.

The Court: That's right; that is the point I am raising.

Mr. Cody: But I think Your Honor is mistaken about the distinction between a felony and a misdemeanor because a misdemeanor could involve moral turpitude.

The Court: No, sir; not under the Georgia law.

Mr. Cody: I think this does involve moral turpitude.

The Court: That is what I want to know, what is the statute; what is the statute of Ohio? How much could one who was convicted of that crime in Ohio? What was the [fol. 863] maximum sentence which such violator would have received.

Mr. Cody: I can't answer that question. I don't have the statute before me, but I take the position that under the Georgia law that the conviction of this crime involves moral turpitude, which conforms to our impeachment statute. That is the position that I take. It is the Georgia law that prevails, and not the Ohio law, on what is moral turpitude.

The Court: You are bringing in a certified copy of a conviction in Ohio—

Mr. Cody: Yes, sir.

The Court: —for larceny, for a particular kind of larceny. In Georgia, if that had been simple larceny, if I recollect my criminal law correctly, it would be a misdemeanor, but it would not be a method of proving moral turpitude, it would not be admissible. But if it had been grand larceny, it would be admissible. The question I am asking is, this particular crime to which this certified copy of the Cincinnati statute, I mean, Ohio, in Cincinnati, was that a crime for which the violator could have received more than a year and a day?

Mr. Cody: I am not prepared to say.

[fol. 864] The Court: Well, that is the controlling point to me, and until it is cleared up, I—

Mr. Cody: May I take a look at the 94 Georgia Reports, Your Honor?

The Court: Yes, sir.

Mr. Cody: Do you have 94 Georgia Reports here? Do we have a Georgia Reports up here?

The Court: There is a particular charge, Mr. Cody, that quite often we give in the case. I have given it many times. The Code Section provides how you may impeach a wit-

ness. That is one of the methods, but it's got to be a crime involving moral turpitude; it can't be a misdemeanor,—

Mr. Cody: That's right.

The Court: —and I believe under the full faith and credit clause we do have to recognize what the Ohio State —Ohio Courts held was a crime involving moral turpitude. We have no such crime by this particular name in Georgia, if I remember my Georgia criminal law correctly.

[fol. 865] Mr. Cody: This is the case of Coleman against the State in 94 Georgia, Page 85, which holds that a conviction of a witness of larceny is admissible in evidence to impeach him.

The Court: Yes, sir.

Mr. Cody: Doesn't make any difference where the conviction was. That is our position. Now—

The Court: Which larceny?

Mr. Cody: It doesn't matter. Our position is that it doesn't matter.

The Court: Well, I have got to be convinced that the Ohio statute under which the violator was charged would have to be a crime involving moral turpitude; otherwise, I think it would be reversible error, serious error.

Mr. Cody: I understand Your Honor's ruling about—

The Court: If you can show me what the Ohio statute is—I understand I'm supposed to take judicial cognizance, but I will be frank, I don't know what the Ohio law is on this point. If you can aid me in knowing what the law is [fol. 866] in Ohio—I assume that, I don't know whether Martindale or some of the—I know the statutes of Ohio are available at the State Capitol.

Mr. Cody: We will take an opportunity to look at it so as to be on the safe side.

The Court: I will let you put this witness back up if you can show me some authority during the noon hour; otherwise—

Mr. Cody: I have one other question to ask this witness after the Jury gets back.

The Court: Let the Jury be brought back in.

Mr. Lockerman: Your Honor, before the Jury come in, will you instruct the Jury to disregard the question he asked about conviction?

(Whereupon the Jury returned to the courtroom at 10:59 a.m.)

The Court: Members of the Jury, just prior to the time you were directed to leave the courtroom certain questions were propounded in regard, on cross-examination, as to whether or not the witness had ever been in trouble or had ever been convicted. At this time I would direct that you disregard any such statement, or any such evidence [fol. 867] dence, completely from your mind until such time—until a later date.

Mr. Cody: May I proceed, Your Honor?

The Court: Sir?

Mr. Cody: May I proceed?

The Court: Yes, sir.

By Mr. Cody:

Q. Mr. Carmichael, did I understand you, in your direct testimony, to say that you have never discussed this so-called Butts-Bryant affair with Mr. Pierre Howard?

A. That is correct, sir; I have never discussed it with him. I know—

Q. Did you ever—did you ever tell him that you bet some money on the Georgia-Alabama game of 1962?

A. I never told him, or nobody that, because I didn't bet any money on it.

Q. I see.

The Court: Any further questions?

Mr. Cody: That's all.

[fol. 868]

Redirect examination.

By Mr. Lockerman:

Q. Mr. Carmichael, do you have any interest one way or the other in this law suit?

A. No, sir; not at all, sir.

Mr. Lockerman: You may come down.

The Court: Any further questions of Mr. Carmichael?

Mr. Cody: No further questions.

The Court: You may step down.

(Whereupon the witness was excused from the stand.)

The Court: Mr. Carmichael, do not leave, you will be required, probably, to come back on the stand, so remain in the anterooms.

Mr. Carmichael: Thank you, sir.

The Court: All right, sir.

Mr. Schroder: If it please the Court, we have perhaps [fol. 869] two witnesses whose testimony we plan to introduce from the stand in the event it might become necessary after the rebuttal, so, with that in mind, I will not call them at this time but will proceed with the reading of the deposition which we started last Wednesday, I think.

The Court: Now, I believe, Mr. Schroder, under the Rules, that if you—if they are to contradict some evidence which has been presented now, you will be required to put them up now.

Mr. Schroder: I understand, but they have the rebuttal. I don't know what they are going to put up in the way of rebuttal—

The Court: Yes, sir.

Mr. Schroder: —but I may have witnesses that may rebut their rebuttal, in other words, surrebuttal.

The Court: Yes, sir.

Mr. Schroder: So that is the reason I am not putting them up at this time. Of course, if there is nothing for them to surrebut, they won't have to go on at all.

The Court: It's got to be strictly in rebuttal.

[fol. 870] Mr. Schroder: Exactly.

The Court: All right, sir.

Mr. Schroder: If the Court please, we will resume reading the deposition of Frank Graham, Jr., the author of the article in the May 23 issue of the Saturday Evening Post. Of course, Mr. Graham's deposition was being taken for discovery and/or use as evidence by us, but we are not adopting him, of course; he is an agent of the opposite party.

The Court: He is an adverse witness.

Mr. Schroder: Adverse witness; yes, sir.

The Court: All right, sir.

Mr. Schroder: I have forgotten where I stopped. Do you have any idea?

Mr. Lockerman: I think it is Page 55.

Mr. Schroder: Sir?

[fol. 871] Mr. Lockerman: 55.

Mr. Schroder: Well, I will ask a couple of questions so we can get back in the middle of the stream where we were when we reached last Wednesday. The question at the top of Page 55, Mr. Cody, Line 5.

FRANK GRAHAM, JR. testified further by deposition as follows:

Cross examination (continued).

By Mr. Schroder:

Q. What do you have in your notes pertaining to that sentence that I have just read?

A. I just have—I asked him about that and he didn't elaborate. There was nothing more for me to add, so I just said "No quick kickers," and referred back to the affidavit.

Q. Skipping on down to the third from the last paragraph in that first column, there is a quotation which reads:

“Butts also said that Rakestraw (Georgia quarterback Larry Rakestraw) tipped off what he was going to do by the way he held his feet. If one foot was behind the other it meant he would drop back to pass. If they were together it meant he was setting himself to spin and hand off. . . .”
What is the source of that quotation?

A. That did not come from Burnett. Burnett was trying to recall other things that had happened and Flack and Howard told me the first morning one of the things they thought they remembered him saying was something about Rakestraw, and this was it.

[fol. 872] Mr. Schroder: Of course, the article itself, Your Honor, says that Burnett said that. Now, the point here was that he now says it didn't come from Burnett; that was after the thing was published.

By Mr. Schroder:

Q. Will you please refer to your notes and read me what you have in your notes pertaining to that which I have just read?

A. Yes. George Burnett later said, when the article came out, that he had not recalled overhearing this remark.

Oh, he mentioned in there—he did mention that there was reference to what he called pass patterns or the passing game, was discussed by Wally Butts.

Q. Well, I am—

A. I have no specific thing on Rakestraw. This was told to me by Flack and Howard in the office that morning, and it was to be checked against the notes, if we got them.

But Burnett heard something about Rakestraw, but he does not recall this exact—but he does not recall the phrase as Flack and Howard mentioned the details.

Q. When did you discover that Burnett denied making that quotation or denied overhearing that?

A. He said he did not recall overhearing this. I learned that after the article was published.

Q. What was the source of that information?

A. The source of that information was a reporter for the Post named Oberdorfer, who was a native of Georgia, and who talked to Burnett after the article came out, who [fol. 873] was down there in Georgia at the time the article was published.

Q. Oberdorfer says that he talked to Burnett after the article was published?

A. Yes.

Q. And Burnett says that that quotation, insofar as his recollection is concerned, was erroneous?

A. So far as—he could not recall having heard that.

Q. Was there anything else that Oberdorfer told you that he learned from Burnett after—

A. No, I didn't speak to Oberdorfer directly. This came through Davis Thomas, the managing editor, who talked to Oberdorfer.

Q. Did Mr. Thomas indicate to you that Oberdorfer had told him anything else pertaining to his conversation with Burnett after the article was published?

A. Yes, that—there was a—he said that during the conference in the room when he disclosed this information to Johnny Griffith, he had remembered Johnny Griffith saying, "We knew somebody had given our plays to Alabama, but we had no idea it was Wally Butts."

Q. Will you pinpoint that for me in the article?

A. Yes, it is on Page 82. There is a heading there that says "Suspicious Confirmed."

Q. In the right-hand column at the bottom?

A. Yes, lower right-hand column, and it is in that second paragraph, where he said, "But we had no idea it was Wally Butts."

He said later that he had thought that Griffith had said that, and Griffith denied having said this sentence and Burnett said, on recollection, it was—he believed it to be

Edwards, the other man in the room at that time, who [fol. 874] was very close to Johnny Griffith.

Q. So that Burnett has, in effect, denied that quotation, on further recollection?

A. That's right, on further recollection he thinks that Edwards actually said that.

Q. Who was Edwards?

A. He was the friend of Johnny Griffith who took Burnett to see Griffith.

Q. Did you meet Edwards when you were in Atlanta?

A. No.

Q. Had you ever met him?

A. No, I haven't.

Q. Have you ever talked to him?

A. No, I haven't.

Q. Going back to Mr. Oberdorfer again, did Mr. Thomas indicate to you that Oberdorfer, after talking to Burnett, since the article was published, had Burnett told Oberdorfer anything else was incorrect in the article?

A. No, not that I know of.

Mr. Schroder: Passing on; Mr. Cody, to the bottom of Page 62, Line—

Mr. Cody: Why not read what is in between.

Mr. Schroder: I will pick what I want to read, and—please the Court, I understand I have a right to read what I want to read and he can read whatever he wants to read. [fol. 875] Mr. Cody: Well, I think the rule—

The Court: Sir?

Mr. Cody: I think the rule requires him to read it, read all the evidence on a particular point.

The Court: No, sir; that is not the law. Many times in patent cases we have certain parties that will read the other party's depositions, and they can just read what they want. It is available to you.

Mr. Cody: May I show the Court one rule on this subject?

The Court: Yes, sir. Let the Jury go to the Jury room. Just let them go to the Jury room.

(Whereupon the Jury retired from the courtroom at 11:10 a. m.)

Mr. Cody: I think it is rule 26 (d) (4), Your Honor, which provides that if only part of the deposition is offered in evidence by a party, an adverse party may require him to introduce all of it which is relevant to the part introduced.

The Court: Yes, sir. Well, you can read—you can read [fol. 876] any part of the deposition that you want to that he omits to read.

Mr. Cody: I realize that—

The Court: Yes, sir.

Mr. Cody: —but I was relying on this rule.

The Court: What rule?

Mr. Cody: 26 (d) (4) which requires that we can require him to read it.

The Court: What rule are you citing?

Mr. Cody: Rule 26 (d) (4) under the use of depositions. If only part of a deposition is offered in evidence by a party, an adverse party may require him to introduce all of it which is relevant to the part introduced and any party may introduce any other part. We have both.

The Court: Yes, sir.

Mr. Cody: We can require him to do it or we can use it ourselves, but on this particular point he's left out—
[fol. 877] The Court: I think you can come back and read it yourself, Mr. Cody.

Mr. Cody: All right, sir.

The Court: Let the jury be brought back in.

(Whereupon the Jury returned to the courtroom at 11:14 a. m.)

Mr. Schroder: Passing on, Mr. Cody, to Page 62, at Line 22.

By Mr. Schroder:

Q. In the next sentence you have written, "But he recorded all that he heard." Is that what Burnett told you?

A. He said he made constant notes. After he—he had listened for several minutes to this and he said he was amazed as it went on and finally he pulled over a note pad which was on the desk, took out a pencil and began to make notes. But for several minutes he had not been making any notes.

Q. My question is related to the language that you have used, sir, that I have just read, "But he recorded all that he had heard." Is that what he told you or is that your own language?

A. That is my own language.

Q. He gave you the impression, though, that he recorded everything that seemed important?

A. Well, he recorded—

[fol. 878] Q. He recorded in writing everything that he considered to be important?

A. After he started to jot down notes, yes.

Mr. Schroder: Mr. Cody and Mr. Lockerman, I am passing to Page 66, Line 4.

By Mr. Schroder:

Q. Below the caption "Putting the pieces together," in the second column of Page 81, what was the source of your information for that full paragraph, beginning, "In the next few hours . . ." and ending ". . . from the field"?

A. Part of it was Furman Bisher. I would say most of the paragraph is based on information given me by Furman Bisher, and the last sentence was ". . . outspokenly bitter about his removal from the field."

Q. What were you saying about that, sir?

A. That came from both Bisher and from Pierre Howard, talking about Georgia football.

Q. Was that information given to you—at least that part of the information which you say Bisher gave you—was

that given to you at the meeting with Bisher in the Manhattan Hotel in New York?

A. Yes.

Q. Did you make notes of it?

A. No, I was just told that by Bisher.

Q. The way the paragraph reads, it would indicate that this was coming from Burnett, because the lead sentence says:

"In the next few hours Burnett tried to piece together what he knew of Georgia football." But that is not what he knew of Georgia football, was it?

[fol. 879] A. That was to fill the reader in on the background.

Q. But that is not what he knew of Georgia football, what follows—

A. I assume that he knew that, too, because in various conversations in the presence of Pierre Howard and Milton Flack, et cetera, this information was mentioned several times. I believe it was mentioned in the Heart of Atlanta Motel, a little bit of the background of Wally Butts, et cetera.

Q. I understood you to say that much of that was given by Furman Bisher.

A. But this was checked, too. I checked the "native of Milledgeville," et cetera. On that, also, there was a story which appeared in the Atlanta Journal on Saturday, which was the 23rd, written by Furman Bisher, headlined "Butts to Resign At Once, Hopes For Job With Pros." And this information was also in here, about Bisher—

Q. When did you get that?

A. On the Saturday that I was in Atlanta.

Q. In that paragraph that I have just referred to, there appears this language:

"Then prominent University of Georgia Alumni abruptly soured on him, . . ." Who gave you that information?

A. Howard.

Q. Did he say what prominent University of Georgia Alumni he had in mind?

A. No.

Q. Did he use the word "sour" or was that your language?

A. The word may be mine, "soured," but it was substantially that, that they had begun to think that he should be removed.

Q. And Bisher—

[fol. 880] A. Yes, and Bisher told me that.

Q. He confirmed that when he was in New York?

A. Yes.

Q. Who did you say it was that told you about Mr. Butts being outspokenly bitter?

A. First it was Howard and then Bisher.

Q. Did you make any notes of your conversation with Pierre Howard?

A. No, just casually I jotted down a name.

Q. Do you have anything in your notes which would indicate the information that is contained in that paragraph which I have just read?

A. About him being replaced?

Q. The whole paragraph.

A. The whole paragraph?

Q. Yes.

A. I have it in this clipping here, some of that information.

Q. Will you let me see the clipping, please?

A. Yes, sir.

Q. Well, there is nothing in that article about his being bitter or about his being—

A. No, I said some of the information which is contained in this paragraph is in that clipping.

Q. Let's pass on to the next paragraph, please, Mr. Graham, which refers to a speculation in Florida orange groves.

A. Yes, sir.

Q. Wherein it is stated, "Butts had lost over seventy thousand dollars." What is the source of that information?

A. The first—first, I was told in the room by Howard and Flack, who were talking about this. They told me they believed it was over eighty thousand dollars. Later, I asked [fol. 881] Bisher on that, about that, and Bisher gave me this figure.

Q. That that amount of cash had actually been lost?

A. That is what he said, yes.

Q. You didn't investigate it any further?

A. No.

Q. Passing on to the next paragraph, beginning "That afternoon Burnett told Flack what he had overheard." Do you have a note on that?

A. I don't know. No, just from talking to Flack and Burnett.

Q. You mentioned—

A. I think that is—

Q. You mentioned the name Carmichael earlier in your testimony, in connection with Burnett and Flack. Did they tell you that Carmichael was also aware of this alleged overheard conversation?

A. They did, and they said he wanted absolutely nothing to do with it, and that he was angry that they had reported the conversation; that they thought—Mr. Carmichael thought the conversation should have been kept secret.

Q. What do you have in your notes supporting what you have just testified to?

A. Nothing. I made no notes on that.

Q. You made no notes on Carmichael at all?

A. No.

Q. Sir?

A. No.

Q. In that same—but you did know that Carmichael had been present—

A. Yes.

Q. (Continuing) —at the time this conversation was intercepted?

[fol. 882] A. I had heard that, and they didn't want to talk about it. They said, "We don't want to mention Carmichael."

Q. No, sir, my question is this: Burnett and Flack told you that Carmichael had been present?

A. I asked them if he was present.

Q. At the time of the conversation?

A. At the time of the conversation. And they said, "John Carmichael does not want anything to do with this. In fact, he is angry that George told Edwards about this."

Q. Did they tell you that he was present at the time it was overheard?

A. No.

Q. Did they tell you that he knew anything about it?

A. They told me about this—I believe Howard mentioned it once, that—he said that—I think it was Pierre Howard who told me that Carmichael had called Wally Butts about this later on.

Q. I am speaking about the time of the interception or so-called interception of the telephone call. Flack and Burnett discussed Carmichael with you?

A. I brought up the name.

Q. Yes, sir.

A. The name of Carmichael, because Flack told me before that these three men had been friends for some time, Flack and Carmichael, Burnett, they knew each other, and so on; and I said, "What about John Carmichael, did he overhear any conversation? Was he in the room?" And they both said that Carmichael didn't want to be brought in on this, and so—and he was angry at Burnett.

Q. Well, he mentions Carmichael in his affidavit, does he not?

[fol. 883] A. He does.

Q. That he told Carmichael about the contents of the so-called intercepted conversation?

A. Right.

Q. When you asked them had Carmichael been present when the conversation was overheard, they didn't deny that he had been present?

A. They didn't deny it.

Mr. Schroder: Page 77, Line 22.

By Mr. Schroder:

Q. Now, you, having known, as you have testified to, that Mr. Carmichael was in on this at the beginning, and that it has been included also in Burnett's affidavit, that he discussed this with Flack and Carmichael together, and you also having been informed that Carmichael, I believe you said, was mad about it—

A. Yes.

Q. It didn't occur to you to check this story out with Carmichael?

A. No, I didn't want to talk to Carmichael.

Q. Why?

A. They said he didn't want to be brought into it and wouldn't talk about it.

Q. You made no effort to contact him at all, even though you had reason to believe that he might disagree with the whole thing?

A. There was no reason for me to think he would disagree with what he overheard. He was supporting a man that he knew.

Q. But you didn't consider that for the Curtis Publishing [fol. 884] Company's good you ought to interview him, too, just to check it out?

A. No, I didn't think it was necessary, because according to what they told me, he would have denied it—

Q. And you knew that when you wrote the article, that he would have denied it?

A. I knew he would not talk to me.

Q. You said he denied—

A. No, I corrected the word "denied." I said he didn't want to talk about it.

Q. And you made no effort to get in touch with him?

A. No. I came back after I had gotten the affidavit.

Q. That was on a Saturday that you came back?

A. Yes.

Q. You arrived in Atlanta when?

A. On a Wednesday evening.

Q. So that you were there for two and half days?

A. Yes.

Q. And you knew about Carmichael on the first day that you had the meeting in Howard's office?

A. I knew the name Carmichael.

Q. You knew the name John Carmichael when you took the affidavit from Burnett?

A. Yes.

Q. Until this day you have never checked him out?

A. Never have.

Q. Did you tell the people with Curtis when you came back to New York about Carmichael?

A. I showed them the affidavit and I said that Carmichael didn't want to play any part in this.

Q. Did you indicate to them that you learned that from Carmichael?

[fol. 885] A. No, no: I told them that Burnett told me.

Q. Did they agree with you that Carmichael shouldn't be interviewed before the article was written and published?

A. They didn't ask me to.

Q. But you told them about him?

A. Yes, I told them—the name Carmichael had originally been mentioned by Dave Thomas to me.

Q. As being with both Flack and Burnett on the day that the conversation was supposed to have been overheard?

A. As being with them.

Q. And that you had been told by Flack and Burnett that he would not in effect go along with them?

A. Right, that he wanted no part of this and insisted on being left out of it.

Q. They knew that before the story was published, the Post, you told them about that?

A. Yes, sir.

Q. On the top of column 3, or the third column on that page, there is the sentence reading:

"The Georgia team was composed chiefly of unsensational sophomores."

What is the source of your making that statement?

A. I wrote "The Georgia team is composed chiefly of sophomores." One of the editors put in that word and apparently it is in reference to the previous sentence," "... with an effective attack built around a sensational sophomore quarterback named Joe Namath." And there was no player on the Georgia team that could be described in any sense as sensational, as this Joe Namath of Alabama was.

Q. Who was the editor who inserted and used that word in the article?

[fol. 886] A. Either Roger Kahn or Davis Thomas.

Q. The next sentence:

"Various betting lines showed Alabama favored by from 14 to 17 points." What do you mean by "betting lines"? Was that your language?

A. Yes, the odds which were in the newspapers before the game.

Q. Did the newspapers refer to them as betting lines?

A. Yes, I have been—often seen that in connection with football games.

Q. In connection with this article, I mean, sir. Do you have any notes on that?

A. Well, I have the fact that it was favored. Yes, I have here 11 to 17-point underdogs. I later checked—

Q. Do you mind if I see that note?

A. Yes, it is on the very top right-hand side.

Q. Where is it?

A. On the top left-hand side.

Q. I am sorry. You have written here, "11-17 point underdog."

A. Yes.

Q. Did you get that out of a newspaper?

A. Yes, I got it from various newspapers, I checked it out, and I asked down there before—I believe I asked Howard about the odds, and he thought 11 would be a little understating it. It wasn't that close. He thought 14. Then I had seen 14 in another paper. So I used 14 to 17 points.

Q. But you have referred in your article to that being a betting line.

A. Yes, that is what it is.

Q. Well, is it in the paper that way?

A. I believe it was.

Q. Sir?

[fol. 887] A. I believe it was.

Q. But you don't have any note to substantiate that?

A. No. That is what the papers generally refer to it as.

Q. The next sentence in that same paragraph:

"If a man were to bet on Alabama he would want to be pretty sure that his team could win by more than 17 points, a very uncertain wager when two major colleges are opening the season together and supposedly have no reliable line on the other's strengths and weaknesses."

Is that your language?

A. That is my language.

Q. What do you mean by it? What is the significance of that?

A. The significance is that, just as it says—

Q. Well, what are you suggesting there?

A. I am suggesting that George Burnett overheard a rather extraordinary and unethical conversation, and certainly there would be—in such a story you could suggest certain motives.

Q. Go ahead.. What motive are you suggesting here?

A. I am suggesting here that somebody bet on the game, I don't know who. But people won money on the game, people lost money on it.

Q. Let's get down to brass tacks. Are you suggesting that either Butts or Bryant bet on the game?

A. I have no means of knowing whether they did or not.

Q. That is not my question. Are you suggesting that?

A. No—

[fol. 888] Q. Are you attempting to suggest to the reader that this was a reason for this or motive—

A. No, I am not suggesting that. I am just taking into consideration motives which could lead to the passing of information.

Q. Motives as applied to whom?

A. Anyone. I have no idea. I mean if I were writing this story, this would be one of the questions which would be asked, what a person reading the story about passing information would want to know about all the background on the game, and this certainly belongs in a story of a game about which there was a very questionable conversation.

Q. Well, it is your thinking, of course, because it is your language, and it was backed up by your thinking when you wrote it.

Now, is it your position that you didn't mean to suggest or indicate that either Butts or Bryant was betting on this game?

A. I didn't mean to accuse. I am just putting in this information. And this is background on the game. If a man were to bet on Alabama—

Q. Without using the word "accuse," just "suggest." Were you suggesting to your readers that maybe that was the motive behind this telephone call?

A. I am suggesting that this could be.

Q. Are you suggesting that it is?

A. No. I have no idea what the definite motives for these men were behind the telephone conversation.

Q. Obviously, you do not. But are you suggesting what they might be?

A. I am putting forth one of the suggestions of—
[fol. 889] Mr. Lockerman: Line 14.

Mr. Schroder: Go ahead; I don't have to say "Sir."

A. (by the witness) I am putting forth one of the—a suggestion as to what could be one of the motives, for anyone passing or getting information on a football game.

Q. So that you are suggesting—

A. I am not suggesting—

Q. This is a motive?

A. Or even a motive.

• • • • •

FRANK GRAHAM, JR., testified further by deposition as follows:

Cross examination (continued).

By Mr. Schroder:

Q. The quotation further down in the column which you attribute to Bryant, "The only chance," et cetera, what is your source of that information?

A. That was a newspaper article in an Atlanta paper which I found in the library.

Q. Do you have that quoted in your notes?

A. Yes.

Q. May I see it, please?

A. It is on the upper left-hand page.

Q. You don't remember what paper it was?

A. No.

Q. I don't believe you refer to it there in your notes.

A. No.

[fol. 890] Q. And the next paragraph, you use the language—

A. It would be in the Atlanta Constitution.

Q. Are you through?

A. Yes.

Q. In the next paragraph you have written:

"Coach Bryant (he neglected to wear a black hood) snapped every trap."

Is that your language?

A. Yes.

Q. What did you mean by it?

A. I meant that he had information which gave him an advantage and these boys were in a sense walking right into a trap. A coach with a strong team—which a coach with a strong team had set.

Q. What does the "black hood" refer to?

A. I said the game itself would have been enjoyed most by a man who gets kicks from attending executions. It

was the kind of a game which for instance in boxing would be referred to as a pig-sticking, a one-sided game in which one team had no real chance.

Q. Did you see the game?

A. No.

Q. Where did you get your information about it?

A. I read the Atlanta Journal and Constitution in the days before and after the game.

Q. Did you read the quotation from Coach Griffith to the effect that Georgia lost the game because they didn't block and didn't tackle?

A. Yes, I did.

Q. Where is that in the article?

A. I don't believe it is in the article. I remember reading that. That was a very typical coach's statement after the game.

Q. You didn't think of putting that in and acquainting [fol. 891] your readers with what the coach thought about losing the game?

A. Oh, here, I put—

“Asked about the game by reporter Jim Minter, he said: ‘I figured Alabama was about three touchdowns better than we were. So that leaves about fifteen points we can explain only by saying we didn't play any football.’”

Q. Did you read the quote I just gave you?

A. No, I think this was the one. I may have, but I don't recall it. This is the one that I—

Q. And you have a quotation from Jesse Outlar of the Atlanta Constitution:

“Every time Rakestraw got the ball he was surrounded,” etc., et al.

You have here that Jesse Outlar was the—I mean that he wrote in the Sunday Journal?

A. He writes generally for the Constitution, but on Sunday the Constitution is not printed.

Q. What do they call the Sunday paper?

A. The Journal, that is what I saw.

Q. That is what you saw?

A. Yes.

Q. Was that taken out of context or do you have his full quote? Do you have his full quote in your notes?

A. I have the quote. I wrote it down—

Q. Let's put it this way: Did the Curtis representative named—I believe you said Oberdorfer.

A. Oberdorfer, yes.

Q. Did he interview Jesse Outlar after this article was published?

A. I don't know.

Q. Do you know whether he told the representative of the Post that Outlar says he was misquoted?

[fol. 892] A. No, I don't.

Q. The next—

A. Let me—I will try to come across that.

Q. I will wait on you.

A. Yes, I have it here.

Q. What does it say?

A. Jesse Outlar in the Sunday Journal. It is on the top left-hand side there.

Q. Mr. Oberdorfer, to your knowledge, hasn't talked to Outlar?

A. No.

Q. At least it hasn't been related to you?

A. Not to me, no.

Q. The next full paragraph, there is this sentence:

"Georgia could do nothing right, and Alabama nothing wrong."

Where did you get that information?

A. Well—

Q. Was that your own language?

A. That is my own language.

Q. Where did you get the information?

A. From talking to—from reading the account of the game and from talking to Pierre Howard, who saw the game—heard of the game—from Mr. Beddow, because

he and Howard were talking about the game when I was in the office and I asked them what had happened in the game.

Q. We have already discussed the interview or the quotation from Jim Minter and Coach Griffith in the next paragraph:

"I figured Alabama was about three touchdowns better than we were. So that leaves about fifteen points we can explain only by saying we didn't play any football."

[fol. 893] A. Right.

Q. Did it ever occur to you that that might be the reason for the score?

A. I would say that is a typical coach's statement after a game.

Q. I say did it ever occur to you that that might have been the reason for the thirty-five to nothing score?

A. It might have been, but the other information that I had here tended to discount that.

Mr. Schroder: Dropping to the bottom of Page 91, Mr. Cody, at Line 24.

By Mr. Schroder:

Q. The next paragraph, Furman Bisher is quoting End Mickey Babb as follows:

"'The Alabama players taunted us,' end Mickey Babb told him. 'You can't run eighty-eight Pop (a key Georgia play) on us,' they'd yell. They knew just what we were going to run, and just what we called it.'"

Was that taken from an article in the paper by Bisher?

A. No, he gave that to me in a telephone conversation.

Q. He did?

A. Yes.

Q. Do you have a note of that telephone conversation?

A. Yes.

Q. What was the date of it, please?

A. That was on Friday, the—it was the Friday after [fol. 894] Washington's Birthday, exactly a week later, which should be March—

Mr. Strubing: February 29th—

The Witness: Yes—no, it would have to be March 1st, wouldn't it?

Mr. Strubing: Yes, that's right, March 1st. The 28th was Thursday. There were only 28 days this time.

By Mr. Schroder:

Q. Mr. Bisher called you in New York and I assume that he was in Atlanta.

A. Yes, he was.

Q. He told you that he had interviewed Babb since he had seen you in New York?

A. Yes.

Q. And this is what Babb told him?

A. Yes.

Q. You made this note, which I will read:

"They taunted us, you can't run eighty-eight Pop on us, they would yell. They knew just what we were going to run and just what we called it."

Q. In your notes you have underscored "Eighty-eight Pop." What significance does that have?

A. It was the name of a play which should go in quotation marks or in italics in the article.

Q. And this is word-for-word what Bisher gave you over the telephone?

A. That's right.

Q. He didn't say Babb said anything else other than [fol. 895] what you have put down?

A. Not that I recall.

Q. You would have recorded it, if he had told you?

A. Yes. I didn't write down everything he said to me—

Q. I know, but when he was quoting from someone you wrote that down?

A. When he was quoting, that is what I wrote down.

Q. The next paragraph includes a quotation from Sam Richwine, the trainer.

A. Right.

Q. "And Sam Richwine, the squad's trainer, told Bisher: 'They played just like they knew what we were going to do. And it seemed to me a lot like things were when they played us in 1961 too.'"

That is exactly as Mr. Bisher gave you over the telephone from Atlanta on Friday, March 1st?

A. That is what I have written.

Q. You have that written down the same way that you have the other?

A. Yes.

Q. May I see it, please?

A. Yes.

Mr. Schroder: Passing over to Page 96, Line 21.

By Mr. Schroder:

Q. What is the significance of the quotation John Logue got from Wally Butts, "Potential is the word for what I saw"?

A. Wally Butts was involved in this and the only quote that I can find in a newspaper after the game from Wally Butts was this one, because the story concerned Wally Butts, and I wanted a remark from him about this game, [fol. 896] whatever he said, and this was the—

Q. But you used the language preceding that quote:

"Only one man in the Georgia camp did not despair that day."

What did you mean by that?

A. Everybody else seemed pretty down about what happened. Wally Butts was looking to the future.

Q. You indicated that you did want a quotation from Wally Butts as to his feelings after the game?

A. Right.

Q. You knew where he lived, didn't you? You knew he lived in Athens?

A. I knew he lived in Athens. I quoted these players right after the game, themselves, and I wanted a quote, and this was the one that was in the newspaper.

Q. Say that again. You did what?

A. I said I wanted a quote from Wally Butts, who was obviously implicated in something which we considered to be an amazing and, let's say, unethical conversation, and I wanted to know what he said about the game directly afterwards, and I found it.

Q. You said you took these quotes from football players right after, but Babb didn't give you a quote—

A. No, not Babb. I wanted Butts.

Q. Richwine didn't give you one right after?

A. No, he didn't.

Mr. Schroder: Dropping down to Line 13.

[fol. 897] By Mr. Schroder:

Q. All right, sir. Have you ever talked to Wally Butts about this whole thing?

A. No, I haven't.

Q. Have you ever talked to Mr. Bryant about it?

A. No.

Q. So far as you know, has Curtis Publishing Company ever had either one of these gentlemen interviewed as to whether this was all true?

A. No, because obviously we knew if this information was brought to them, they would immediately deny it, and, of course, they subsequently have.

Q. Just as in the case of Carmichael?

A. Well, Carmichael plays no part in this thing in the sense that Butts and Bryant do.

Q. You mean as to the truthfulness of the whole thing?

A. You just asked me a question about Butts and Bryant.

Q. Yes, sir.

A. And I said to ask them about this was immediately to get a denial, and, of course, they have.

Q. But before you published this story, or the Post published the story, it didn't interview either of these men, so far as you know?

A. No.

Q. And didn't interview Carmichael?

A. No,

Q. The next paragraph has to do with the whole matter weighing heavily on George Burnett. Do you have notes covering that?

A. I have notes on George Burnett, who told me the matter has been—had weighed heavily on him for a long time and he was worried and upset about it and that is [fol. 898] why he originally told his story to Edwards.

Q. Will you find that in your notes for us, please?

A. No, this was just from what he told me in the time I spent with him.

Q. You gave a quotation in that article directly from Burnett. Do you have a note on that?

A. No. He had mentioned this, I believe, in the room at the Heart of Atlanta Motel. He brought up the—

Q. But you have no note to back up that quotation?

A. No, I don't take notes as a rule on things like that. I don't take notes on general conversations.

Q. You quote directly from conversations?

A. No. I say an exact quote, which I would want to be precise, I take notes on that. On the other, I make a mental note, jot down a word or two, from which I remember.

Q. But this is a direct quote?

A. A direct quote, which is common practice in journalism, to recreate what this man said to me.

Q. On a direct quote?

A. Yes. I didn't make it up. I recreated it from what he told me. These are approximately his words.

Q. Your next paragraph reads:

"On one sense Burnett knew it would be easiest to keep the notes in the drawer. While every citizen is encouraged to report a crime to authorities, the penalties against the man who talks are often more severe than those against

the culprit. Burnett wasn't worried about physical retaliation. But there might be social and economic ones. Football is almost a religion in the South; the big-name coaches there are minor deities."

Is that your language?

[fol. 899] A. I don't believe I wrote this sentence.

Q. Sir?

A. I don't remember writing this sentence. I believe it was put in by the editor.

Q. The first sentence or the whole paragraph?

A. I would say none of that paragraph was mine, as I recall it.

Q. Do you know who wrote it?

A. I believe either Mr. Kahn or Mr. Thomas.

Q. Do you have with you there a copy of what you did submit to the Curtis Publishing Company?

A. No, I haven't. No, I brought—

Q. Do you have one anywhere?

A. Yes, I do. I believe it is back in Mr. Kahn's or Mr. Thomas'—either Mr. Kahn or Mr. Thomas would have it.

Mr. Schroder: Turn to Page 104, Line 7.

By Mr. Schroder:

Q. The next paragraph, was that yours, beginning:

"On January 4 of this year he sat in his office with Bob Edwards..."?

Was that yours?

A. Yes, he gave me that.

Q. The paragraph following that:

"'You know, Bob,'..."

That was also given you by Burnett?

A. Yes.

Q. That was your language?

A. This is what he told me. This is almost exactly as he told me. He said:

"This has been eating me up for a long while," and then he told me the rest of this.

[fol. 900] Q. Do you have notes to support that—both of those paragraphs?

A. Part of it comes from the affidavit, and the rest is from my memory of what he gave me, what he told me the conversation had been like.

Q. You don't have any notes?

A. No, because he could not remember the exact words himself.

Q. In the next column on that page, there appears in the second paragraph this sentence:

"Griffith pressed to meet him,..."

Where did you get the information about Griffith pressing to meet him?

A. From Burnett. Burnett said that he had asked Edwards to keep him out of it, but Griffith said he wanted very much to talk to him.

Q. In your next paragraph you refer to the Georgia Tech-Alabama game in Atlanta and in the paragraph following that the same topic is discussed. What is the significance of that?

A. The significance is that this was a popular topic of conversation, which—at the time. Burnett recalled hearing talk of it around the hotel and Howard said there was talk of it, too, that he knew it.

Q. What did you mean to imply when you put that in there? How is that connected with the so-called telephone conversation?

A. It connects because the name of Bryant is involved in both the telephone conversation and in this talk which was around at the time.

Q. I will put it to you directly: Did you intend to imply by that that Bryant had a bet on the Georgia Tech-Alabama game?

A. No, I just wanted to imply that there was this talk around. I will not imply it because I didn't know, but it

[fol. 901] was a curious coincidence that there was talk about the strange finish of this game going around at the end of the season.

Q. You did attach, shall I say, some suspicions about the outcome of the Tech-Alabama game, insofar as Bryant was concerned?

A. I am just reporting what happened in the game and mentioning that there was talk about this, that there was talk, and apparently suspicions, about this, and I thought that had a place in the article.

Q. So that you intended to indicate to your readers that there was something suspicious about the way the Alabama-Tech game ended?

A. Just that people were suspicious. I don't know that there—

Q. That was why you put it in the article?

A. Yes.

Q. It related to suspicions?

A. Yes.

Q. Further on down in that column you quote Burnett:

"'I didn't believe you until just this minute,' . . ." I don't mean quote Burnett—excuse me—you say Burnett told you that Griffith told him this, and I am quoting:

"'I didn't believe you until just this minute,' he told Burnett. 'But here's something in your notes that you couldn't possibly have dreamed up . . . this thing about our pass patterns. I took this over from Wally Butts. When I became coach, and I gave it a different name. Nobody used the old name for this pattern but one man. Wally Butts.'"

Your obvious source for that was Burnett?

A. Burnett.

Q. Do you have some notes to support it?

[fol. 902] A. Yes, this brief mention down here on the bottom. It says, "Up until this minute." The bottom left—bottom right, I am sorry.

Q. I will quote from your notes:

"Up until this minute I didn't believe you, but only Butts called..."

A. Called it by this name.

Q. Sir?

A. It refers to the fact that only Butts called the play by that name.

Q. You have used in your quotes, though, from Johnny Griffith, "pass patterns." What pass patterns did Burnett indicate to you that Griffith had in mind or referred to in his conversation with Burnett?

A. I have no—I got no specific information on plays.

Q. Your notes don't refer to pass patterns. At least not the part that you gave me.

A. That information came from—here, in this conversation with Bisher, he referred to pass patterns.

Q. Well, I quote from your notes—this is from Bisher?

A. Bisher.

Q. "Nobody ever used that name for that play but one man."

Is that the part of your notes that you are relating to this quotation from the article that I just read?

A. Yes, I put that together from that phrase from both Bisher's remembrance and Burnett's recollection.

Q. Where did Bisher tell you that he got that information?

A. From Griffith.

Q. Sir?

[fol. 903] A. From Griffith.

Q. He told you that Griffith told him that is what he, Griffith, told Burnett at the Biltmore Hotel?

A. Yes, he said: "Burnett's notes were read to me and I knew that he knew what we were going to do against Alabama." That is what Griffith told Bisher.

Q. Bisher has called you on the telephone and quoted Coach Johnny Griffith as having told him, Furman Bisher, —say that again, please, sir—the following—and you read—

A. "As Burnett's notes were read to me, I knew that he knew what we were going to do against Alabama."

Q. Unquote?

A. That's right.

Q. Now, did he say whom he meant by "he"?

A. Burnett.

Q. He said that Burnett knew what Georgia was going to do against Alabama?

A. He said that the man who had these notes, Burnett—that is what he—

Q. That the man who had these notes, meaning George Burnett?

A. Yes.

Q. Knew what he, Johnny Griffith, was going to do—

A. Yes, he said "what we were going to do against Alabama."

Q. In short, Bisher called you and told you that he had interviewed Johnny Griffith?

A. Yes.

Q. And Johnny Griffith had told him, Furman Bisher, that when he, Johnny Griffith, read Burnett's notes, that George Burnett knew what Georgia was going to do against Alabama?

[fol. 904] A. He said the man who had these notes could—as Burnett did—knew "what we were going to do against Alabama." The man—now, I don't know—this was just what he said.

Q. All right.

A. And I didn't use this because it was a little vague as to whether he meant Burnett himself or Wally Butts, who gave the information. But is as I got it.

Mr. Schroder: Page 113, Line 17.

By Mr. Schroder:

Q. The next paragraph says: "Griffith has since spoken of his feelings when he had finished reading Burnett's notes. . . ." What is your source for that?

A. Bisher.

Q. When did Bisher give you that information?

A. On that Friday.

Q. That was a telephone conversation he made to you on March 1, 1963?

A. Right.

Q. The quotation is as—the quotation in the article as given to you by Bisher, which reads: "I don't think I moved for an hour—thinking what I should do. Then I realized I didn't have any choice."

A. Yes?

Q. Do you have that quote as given to you direct by Furman Bisher?

A. Yes. It's at the bottom there.

Q. Where is the part about "Then I realized I didn't have any choice"?

A. He told me that on the phone.

[fol. 905] Q. You didn't make a note on that?

A. No, I just put that in to refresh my memory.

Q. Your next paragraph has to do with what Griffith did later. You said: "Griffith went to university officials, told them what he knew and said that he would resign if Butts was permitted to remain in his job." What is the source of that information?

A. Burnett. Burnett told me that he was told that by Cook Barwick.

Mr. Schroder: Passing over to 116.

By Mr. Schroder:

Q. Mr. Graham, I hand you an exhibit identified by the Reporter as Plaintiff's Exhibit No. 1, and ask you to identify that, please, sir.

A. Yes, I wrote this. It is a carbon of my article.

Q. Is that a copy of the original manuscript that you submitted to the Curtis Publishing Company?

A. Yes.

Q. Of the article subsequently printed or published in the March 23rd issue?

A. That's right.

Q. Not that I have any doubt that anything might happen to this, but will you kindly, at your convenience, initial each page here, please, sir?

A. Right (complying). Incidentally, there is an error there in the first page of that story in print. George Burnett—do you want me to wait?

Q. I am listening.

A. George Burnett was still waiting to get his notes, and he had recalled the date of the conversation between Butts and Bryant as a Friday. When he got his notes [fol. 906] back, he saw that he had dated his notes the 13th.

Q. That explains the mistake in the very first sentence of the article?

A. Yes.

Q. Which in the article says Friday, the 14th?

A. Yes.

Q. Whereas, it was Thursday, the 13th?

A. Yes.

Q. Mr. Graham, you have demonstrated several pages of notes during the morning and used them to refresh your recollection with respect to various matters asked you.

Do you have any objection to my having reproductions made of those notes here today?

A. That is all right with me.

Mr. Schroder: Passing over to 118, Line 9.

Mr. Lockerman: Line what?

Mr. Schroder: Line 9, n-i-n-e.

By Mr. Schroder:

Q. Now, the remaining part of that paragraph, ending with: "Shortly afterward he was seen in Atlanta at a Georgia Tech basketball game." Was furnished to you by whom?

A. Parts of this were furnished by Pierre Howard and Milton Flack, and I checked, for instance, the date—the

dates as January 28th and June 1st, with Furman Bisher. [fol. 907] Q. Therefore, you are now testifying that the contents of that paragraph were furnished you by Furman Bisher, Pierre Howard and Milton Flack?

A. Yes.

Q. Do you have notes on that, sir?

A. No, I don't see the notes on that.

Q. What I have particular reference to is the so-called rumor that is referred to by you as being the wildest one, that being that Coach Butts was mysteriously and suddenly ill and had entered the State Hospital at Athens.

Do you know who it was that gave you that information, as to the substance of that rumor?

A. The rumor was given me by Howard and Flack before I met Burnett, but they said this rumor had been around town, they had heard it, but that Howard said that he had seen Wally Butts at a Georgia Tech basketball game and I later checked that with Furman Bisher, and he said that the rumor was false, that Butts may have had a physical examination in connection with his retirement some time during the winter, but that he was never a patient in the hospital or anything like that.

Q. Did any of your informants indicate that Coach Butts was to be placed upon a pension, as indicated by your article?

A. Yes, this story was—was a matter of fact, Bisher indicated that this physical examination had to do with his resignation and application for a pension.

Q. Did you look into that further by checking with the State Hospital at Athens?

A. No. When he told me there was no truth to this rumor, we dropped it.

[fol. 908] Q. Well, you didn't indicate in your article that there was no truth to the rumor.

A. Yes, I do—yes, "This was quickly scotched. . . ." I say that. They "maintained Butts merely went for the physical check-up."

Q. Required for his university records?

A. Yes.

Q. What official—

A. "Shortly afterward. . . ."

Q. That was given to you by Pierre Howard, who said he saw them?

A. Yes.

Q. What university official scotched the rumor immediately before that?

A. Apparently from Bisher through Cook Barwick.

Q. From Bisher through Cook Barwick?

A. Yes.

Q. The next paragraph, having to do with the meeting in Cook Barwick's office, what was the source of that information?

A. Let's see. This was Burnett.

Q. Reference is therein made to a lie—polygraph lie-detector test.

A. Yes.

Q. Do you know who authored the editorial in the Saturday Evening Post of May 4, 1963, entitled "The Polygraph-Happy Pentagon"—

A. No, I don't.

Q. (continuing) —in which four individuals were praised for declining to take the polygraph test?

When I say "were praised," I will read: "Only four persons (God bless them) declined to take the polygraph tests."

A. No.

Q. You don't know who authored that editorial?

[fol. 909] A. No.

Q. In your next paragraph under "Phone Company Check", the statement is made that: "Next an official of the Southern Bell Telephone Company checked and found . . ." et cetera, can you identify the official of the Southern Bell Telephone Company?

A. No, I can't.

Q. Can you tell me the source of that information?

A. It was Burnett and later Bisher who said that he had heard the same thing.

Q. From whom did Bisher say he had heard it?

A. I don't know. I didn't ask him.

Mr. Schroder: Turning to 123, Line 21.

By Mr. Schroder:

Q. The next paragraph begins: "February 21 was a painful day for George Burnett.", et cetera. What is your source for that information?

A. Burnett.

Q. Do you have any notes on that?

A. Yes, I have. Here, on this.

Q. Point it out to me, please.

A. Here. February 21. And this was some of the conversation.

Q. Your notes read: "Last meeting, February 21. You were on probation when you heard this conversation. Now I am on trial." Is that the part of your notes that you give as your source for the information in the paragraph beginning "February 21 was a painful day for George Burnett"?

A. Yes.

Q. In the next paragraph you wrote: "From the start, Burnett sensed a mood of hostility in the air." And I [fol. 910] emphasize the word "Hostility." Is that your language?

A. No. Burnett himself used the word "hostility."

Q. Is that in your notes?

A. No.

Q. And the remaining part—

A. But he could not pick out anyone who was actually hostile to him, but he was a little shaken up by the manner in which this hearing took place, particularly when they asked him, "is there anything else in your past you're trying to cover up?"

Q. But in his conversation with you he could not point out any particular party who attended that conference or that meeting as being hostile to him?

A. Well, he thought that this regent who sprang this question to him, who said, "Is there anything else in your past you're trying to cover up?", he thought that he was hostile. And there was a man there named Hartman and he didn't know who Hartman was, but he felt—

Q. What did he tell you specifically about Hartman and what Hartman had to say to him?

A. He said Hartman—there were no questions asked by Hartman. He just said that he had the feeling that Hartman was there as an observer, a friend of Wally Butts.

Q. Although nothing was said by Hartman, he had the feeling, however, that Hartman was hostile toward him?

A. Yes, unfriendly.

Q. Just by being there?

A. Yes, he sensed this mood in the air. In connection with Hartman or anyone, he didn't say it was hostile, but he said the whole atmosphere was hostile and he mentioned that Hartman, he had the feeling, was there as a [fol. 911] friend and—an observer and friend of Wally Butts, and he said Bernie Moore, after shaking hands with him, didn't look at him for the rest of the meeting.

Q. Did he tell you that anyone at the meeting told him in what capacity Hartman was there?

A. No.

Q. It was just a feeling on his part?

A. Yes.

Q. Now, you mentioned in that article that Burnett was confronted "with a report that he had been arrested two years before for writing bad checks and that he was still on probation when he overheard the conversation between Butts and Bryant."

Didn't that alert you to look into further such incidents on the part of Burnett?

A. We understood later, when I came back here and made my report, we understood later from Furman Bisher

that this full investigation had taken place with the university.

Q. I am talking about you, sir, not the university.

• A. By the time I came back here I was out of the actual investigating and so on. I came back here, made my report, on these men I talked to, and on the affidavit that I brought back. Then it was shown to the editors and they were to decide whether or not to go ahead with the article.

Q. So that you put that information before the Curtis Publishing Company editors about Burnett having been arrested two years before for writing bad checks and left it to them to decide, after investigation, whether there were other such incidents?

A. Yes, and then through Bisher we had corroborating evidence that a full investigation had been made.

[fol. 912] Q. Did you ask Bisher whether the university looked into the question of whether or not there were other such incidents?

A. None had come to light—

Q. I said did you ask him—

A. I asked him to get all the information that he could.

Q. About bad checks?

A. About Burnett.

Q. About bad checks on the part of Burnett?

A. Well, it would include bad checks.

Q. Did you include bad checks—

A. Yes, we mentioned bad checks and anything else that would be of interest.

Q. You and Mr. Kahn, representing the Post, at this meeting with Bisher, asked him to look into the matter of whether or not there had been other incidents of bad check-writing on the part of Burnett?

A. Not specifically, no.

Q. Well, generally?

A. Well, generally—

Q. Tell me how it was brought up and talked about.

A. I can't remember that.

Q. Generally. You have remembered a lot today.

A. We just said that Bisher would go back down there and accumulate every other bit of information which would be useful to us in this, particularly in talking to the university authorities. Then there were no specific—he had no specific instructions.

Q. Did you and Mr. Kahn, when you met with Bisher and commissioned him to represent the Saturday Evening Post in its field research in connection with this story, ask him to look into the background or look any further into the background of Burnett?

A. No, that had been thoroughly gone into.

[fol. 913] Q. I am asking the question. Did you?

A. I didn't.

Q. Did Mr. Kahn ask Mr. Bisher to look any further into the background of Mr. Burnett?

A. I don't know.

Q. You were present, were you not?

A. Not when I was present. He had other conversations with him.

Q. You were present in the conference in the Manhattan Hotel with Mr. Kahn and Mr. Bisher. Did you hear Mr. Kahn ask Mr. Bisher to look into any background of Mr. Burnett with respect to his bad checkwriting?

A. I didn't hear anything specific.

Q. Did you hear anything generally?

A. Bisher was to talk to Cook Barwick. Anything of interest was to be reported back to me.

Mr. Schroder: Passing on to 131, Line 9.

By Mr. Schroder:

Q. Now, in your third beginning paragraph on the last column of your article, you say: "Burnett was frightened and angry" when the matter of his bad checkwriting came up before the meeting.

Did he indicate to you why he was scared and why he was angry?

A. No. He said he wasn't—he was not angry at that having been brought up, but he was frightened and angry at the manner it was brought up, particularly, "Is there anything else in your past you're trying to cover up?"

Q. But your article does not state that he was frightened and angry at the manner. It just says—

[fol. 914] A. It follows up the quote, yes.

Q. Is that what he told you, that he was frightened and angry?

A. Yes, that is what he said.

Q. Insofar as you know, because you have not checked into it, the only two bad checks that he admits having written and being convicted of are those included in the fourth paragraph in the last column, which say, "I was way behind on my bills and two of the checks I wrote—one was for twenty-five dollars and the other for twenty dollars—bounced." Those are the only two that you know about?

A. Those are the only two I know about.

Q. And you haven't looked into the question of whether there were any more?

A. No.

Q. In the next paragraph, the next to last sentence reads:

"He cared about his reputation." Is that Burnett?

A. Burnett.

Q. Did he indicate to you that he cared about anybody else's reputation, other than his own?

A. That is my sentence.

Q. That is your sentence?

A. Yes.

Q. He didn't tell you that?

A. No.

Q. The next paragraph, what is your source for the quotation attributed to Burnett there, "Doctor Aderhold was always very kind . . ." et cetera?

A. It was Burnett, the day he came back to the Heart of Atlanta Motel in the afternoon, after the meeting.

Q. You have no notes to support that?

A. No, I don't find any here. He told me that then and [fol. 915] he repeated it, as I remember, on the way to the airport on the Saturday that we—that he took me out there.

Mr. Schroder: Over to Page 134, Line 19.

By Mr. Schroder:

Q. My question is much simpler than that. It simply is this: do you, representing the Post, attach any significance to the refusal by Coach Butts to take a lie-detector test?

A. As I, representing the Post, no. Individually, I attach some significance to it.

Mr. Schroder: Turning to Page 137, Line 16.

By Mr. Schroder:

Q. Now, in the third from last paragraph in the article you say: "The chances are that Wally Butts will never help any football team again." Is that your language?

A. That is mine.

Q. Is that your opinion?

A. That is my opinion.

Mr. Schroder: Page 138, Line 17.

By Mr. Schroder:

Q. You felt, and the Post felt, or Curtis Publishing Company felt, that when this article was published that was the death of Wally Butts in his chosen profession?

[fol. 916] A. I would say that it would be very difficult for him—

Q. That is your opinion?

A. That is my opinion.

Q. The next to the last sentence of that same paragraph, you say: "But careers will be ruined, that is sure." Is that your language?

A. That is my language.

Q. Whose career were you referring to?

A. To Wally Butts.

Q. You knew and the Curtis Publishing Company knew that when that article was published it would ruin Coach Butts' career?

A. Yes, we did.

Q. I see.

A. Because the conversation took place—if the conversation took place as Mr. Burnett said it did, I don't think there was any university that would hire him.

Q. How about professional football, is that a career? You meant to include that, too?

A. I was thinking of colleges here, but—

Q. You didn't limit it to colleges, though, did you?

A. I don't think I thought about it.

Q. Well, read it, sir: "Careers will be ruined, that is sure."

A. I don't think there is any reference to professional football here, no.

Q. Well, you meant careers as coaches in the profession, did you not?

A. I am talking here only about college football. I don't know what professional hiring standards are or anything. I say: "A great sport will be permanently damaged. For many people the bloom must pass forever from college [fol. 917] football." That is all that I was thinking of.

Q. But you just said, sir, at the beginning of that paragraph: "The chances are that Wally Butts will never help any football team again." And that would apply to any football team?

A. I said "the chances are."

Q. So that you were not limiting—

A. I wasn't thinking of that. I was thinking of college football.

Q. Your article did not mention that?

A. It only says college football.

Q. Does it say "any"?

A. The first sentence, yes.

Q. Does that include pro?

A. Yes.

(In chambers)

The Court: What I got you in here for was on the question of impeachment of Mr. Carmichael. I think probably I was in error in regard to larceny not being a crime involving moral turpitude. After looking at the charge, I think it is a crime involving moral turpitude, but the period of time of 30 years, I feel, renders that testimony inadmissible, and I will be glad to cite you some cases on that. The Fifth Circuit says—

Mr. Cody: I think it is largely a discretion—in the discretion of the Court, isn't it?

[fol. 918] The Court: If it had been in the last five years, I'd have no hesitancy, but that boy was 18, according to the thing, he was 18 years old, and that was—occurred in 1933, September of '33, almost 30 years ago. There are some Supreme Court decisions on that, and my ruling on that would be that the crime for which—charged against Mr. Carmichael to which he entered a plea of guilty does involve moral turpitude, but the lapse of time which shows by the record that he entered a plea or was tried, convicted, I don't remember which, was in September, 1933, and being so remote, I do not feel that it would be proper to impeach him by a crime of such—which occurred over such a long period of time ago. The law, I think, permits a man to make amends at some time. If you have got anything in the last five or ten years, I will let you—

Mr. Cody: I haven't.

The Court: All right, sir. But I think I placed my ruling on the wrong ground. I was almost sure was a year and a day, but larceny is not such a crime, and it would be proper if it is that period of time. I'd like the record to show that.

Mr. Schroder: I don't know that there is any place in the record for what I am going to say, but Mr.—

The Court: All right. What did you want to say?

[fol. 919] Mr. Schroder: Mr. Cody just indicated before we discussed the point that you just completed that some, if not all of his rebuttal evidence would be to the effect that the Plaintiff—I mean, would go to the Plaintiff's—character witnesses against the Plaintiff, and I don't think that would be proper rebuttal testimony.

The Court: I do, Mr. Schroder, for this reason, that the burden is on Mr. Schroder to establish the truth.

Mr. Schroder: No, sir; "Cody."

The Court: Mr. Cody, I beg your pardon, I was looking at him and—

Mr. Schroder: The record wouldn't show it.

The Court: And then the burden is on you to show damages.

Mr. Schroder: Yes, sir.

The Court: Punitive damages and general, and I think properly in mitigation of damages character evidence would be admissible.

Mr. Schroder: Would that be made clear, of course, to the Jury?

[fol. 920] The Court: I am going to charge them.

Mr. Cody: You can't offer character evidence, Your Honor, against the Plaintiff until he testified.

Mr. Strubin: It goes to credibility.

Mr. Cody: It goes to credibility too. If you made a charge to the Jury that such as that is in mitigation of damages, I think you would be committing an error.

Mr. Lockerman: Of course, when you—

The Court: What I was advancing was a theory, I don't recall exactly—

Mr. Cody: There is—

The Court: My charge to the Jury is going to be to the effect that a man with a good character is entitled to recover more than a man with a bad character. That is my theory.

Mr. Strubin: That is all right.

[fol. 921] Mr. Schroder: No, no.

Mr. Cody: That is different from what we are talking about.

Mr. Joiner: Impeachment.

Mr. Cody: It also comes under impeachment, and the Jury has got a right, if they think he has been successfully impeached, not to believe him at all.

The Court: Well, what is going to be the nature of your impeachment? There is two different—you can ask one question: Do you know the Plaintiff? How long a period have you known him? Do you know the character and reputation which he bears in the community in which he lives? Is that good or bad? And that is it.

Mr. Joiner: Would you believe him under oath?

The Court: And you can proceed on the other: Do you know the Plaintiff? How long have you known him? Do you know his reputation of truthfulness or truthfulness and veracity? Would you believe him under oath? I don't know which one you intend to proceed under.

Mr. Cody: That might vary, depending on the witness. [fol. 922] The Court: We will have to get to that bridge when we—cross that bridge when we get to it. You have got me talking—

Mr. Cody: You can never offer evidence of that type regarding the Plaintiff until he has already testified in the case.

Mr. Lockerman: Except in the case where the issue is reputation, such as this, and you carrying the burden.

The Court: Well, I don't believe that is the burden he carries under a plea of justification. I don't believe he gets into character. I think it is admissible.

Mr. Schroder: Well, we may have—

Mr. Cody: I have nothing else.

Mr. Schroder: We may have a discussion as to whether or not the character is being—character evidence is being offered to impeach him as a witness or to go to mitigation.

Mr. Cody: I don't think I have to commit myself on that.

The Court: I don't think so, Mr. Schroder.

[fol. 923] Mr. Schroder: Just let it be known sometime before the charge to the Jury.

The Court: I believe he—I believe my charge will cover that point. If it doesn't, you call it to my attention and except to it.

Mr. Schroder: I have to—

The Court: This is not on the record.

FRANK GRAHAM, JR., testified further by deposition as follows:

Cross examination (continued).

By Mr. Schroder:

Q. In the paragraph I just finished when I was discussing the careers of Wally Butts, or the career; there is this statement about two-thirds of the way down: "... Motion pictures of other games are being scrutinized." What is the source of that information?

A. Furman Bisher.

Q. Is that your language?

A. Yes. I don't remember the words—writing the word "scrutinized." I might have.

Q. Do you know what other games motion pictures of were being scrutinized?

[fol. 924] A. No, we just heard that pictures of all Georgia games—

Q. "We heard"?

A. Yes, I got that.

Q. Who heard?

A. I heard it from Bisher.

Mr. Schroder: Page 144, Line 14.

By Mr. Schroder:

Q. Have you looked into whether or not the so-called betting line changed in any degree before the game?

A. I heard it did not.

Q. From whom did you hear that?

A. From Pierre Howard and also by checking the newspapers. There was no indication that the betting line had wavered on that—

Q. Do you know what effect upon the betting line a substantial bet one way or the other will have?

A. A very large bet in a national game might have some effect on it or it might—a very large bet might even prompt some of the bookmakers to take the game off their boards.

Q. Was this game taken off the boards?

A. No, it wasn't.

Q. According to the information that you have there—strike that, please. According to the information that you have there was no change in the betting line prior to the Alabama game?

A. As far as I know there was no change. I mentioned in here there was 14 to 17 points. It may have fluctuated slightly. I saw it at different times, at different points, [fol. 925] but so far as I know there was no major significant shift in the betting spread.

Q. Let me ask you this: Was there, according to your information, any shift, and if so, when did it occur?

A. None whatsoever.

Q. Now, before you wrote your article for the Curtis Publishing Company, also at the time you were writing it, and furthermore, at the time that you had completed it and submitted it to Curtis Publishing Company, you had told them and they knew that you did not have available to you at any time the so-called notes that were taken by Burnett during this conversation?

A. That's right. We kept trying right up until the last moment to get them.

Q. Before you wrote your article, at the time you were writing it, and after you had completed it and delivered it to the Curtis Publishing Company, they knew about John Carmichael and they knew that he had not been interviewed by you or anyone else for them?

A. They did. Carmichael was mentioned in the affidavit.

Q. They knew what I just said?

A. Yes.

Q. That you had not interviewed him, nor anyone else for them?

A. That's right.

Q. Is that correct?

A. That's right, so far as I know.

- Mr. Schroder: Page 148, Line 9.

Q. Mr. Graham, in researching this article before you [fol. 926] wrote it, did you review any articles written about the games played by the University of Georgia in the year 1961?

A. No, I didn't. I stayed with 1962.

Q. When they telephoned you from Curtis Publishing Company, when they first contacted you to come in, that they had an assignment for you, did I understand it correctly when you testified this morning that you were to go to Atlanta and to make negotiations or to negotiate for Curtis regarding the acquisition for them of the exclusive right to publish this story and also to undertake whatever research down there was necessary to substantiate it?

A. Chiefly I was told to go there, hear what the story was about, and if necessary get an affidavit, which was set up for me between Mr. Beddow and Mr. Howard, and then to come back to New York after talking to all of these principals originally named, Howard, Flack and Burnett, and let them—let the Post see what I had.

Then at the same time when I was down there, I was told to offer this money to Burnett or Howard.

Q. In other words, your mission to Georgia was not only to negotiate for the—shall we call it purchase of the story, but also to verify it through talking to these other people?

A. Yes, to talk to them.

Q. And to check it out with them?

A. Yes.

Mr. Schroder: Dropping down to Line 24.

[fol. 927] By Mr. Schroder:

Q. Have you written any articles in the past on football and, if so, what are they?

A. I have never written a major article on football. When I was at—at Sport Magazine, I was assistant managing editor, and I covered various events and talked to football players and coaches, as part of my duties. But I never—

Q. How long ago was that?

A. That was from 1955 through 1958, the beginning of 1958.

Q. Can you identify for the record any football coaches and football players that you interviewed at that time?

A. I can't at the moment.

Q. Sir?

A. I can't at the moment. I am trying to think.

Q. Have you ever authored any article that might deal with a so-called fixed or rigged athletic event?

A. No, I haven't.

Mr. Schroder: Page 153, Line 10.

By Mr. Schroder:

Q. Have you ever in your history as a sportswriter, ever heard of a football game even attempted to be fixed by coaches and not players?

A. I have never heard of it. This is the first—

Mr. Schroder: Page 154, Line 19.

By Mr. Schroder:

Q. One more question, Mr. Graham. What have you [fol. 928] been paid by the Curtis Publishing Company in connection with your services in writing this article?

A. Two thousand dollars.

Q. Their agreement was contingent upon your furnishing a story that fitted in with their policy—

A. I was told—I have been working regularly on repeated assignments for the Post since December. In fact, I now have a contract which guarantees me so much a year from the Post, and I was told to go down and investigate this story and I would be paid whether or not the story was published.

Q. But the amount would be contingent upon the type of story that you ended up with?

A. We didn't discuss that. They just told me that I would be paid, but it would be no money out of my pocket, because if this story didn't work out, I would be immediately assigned to another one, which I was right after this.

By the time the story came out, I was in Florida working on an auto racing story.

Mr. Schroder: Page 156. Mr. Cody asked a couple of questions which I want to read. This question is by Mr. Cody.

The Court: I believe Mr. Cody probably should ask his own question; I mean, any that you want to omit, I will let Mr. Cody ask, but any question Mr. Cody asked, I think it would be proper for him to read it.

Mr. Schroder: Every one I have read up to now is by me. If he doesn't read it I will have the chance?

[fol. 929] The Court: You will have the privilege of coming back; yes, sir.

Mr. Schroder: All right, sir.

The Court: Mr. Cody, did you wish to read part of the deposition at this time?

Mr. Cody: Just a moment, Your Honor.

The Court: All right.

Mr. Cody: I don't believe so at this time, Your Honor.

The Court: You don't care to read any of it? All right, Mr. Schroder, I will let you read those two questions.

Mr. Schroder: "By Mr. Cody."

Mr. Lockerman: What page?

Mr. Schroder: 156.

[fol. 930] By Mr. Schroder:

Q. I have one or two questions to ask you, Mr. Graham.

A. Yes, sir.

Q. In your direct examination by Mr. Schroder you mentioned that you had access to the Atlanta newspaper in preparing some portions of the article. Where did you go to get access to those papers?

A. To the public library.

Q. In Atlanta?

A. In Atlanta.

Q. In this article that you wrote, did you intend in any way to suggest that Coach Butts or Coach Bryant bet on any particular game or any game?

A. Not after looking over all the information. I had—of course, this was in my mind at all times. When I got through with the article, when I had gone over all the information and had re-read the article and brought it in here, I didn't intend to—I certainly—there was no idea of making an accusation.

Q. Did you make any such intimation in the article?

A. No, I don't believe I did, because I don't know that these two men bet on the game.

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CLAY D. BLAIR, JR. called as a witness on behalf of the Plaintiff, after having first been duly sworn, testified by deposition as follows:

[fol. 931] Cross examination.

By Mr. Smith:

Q. State your name, please, sir?

A. Clay D. Blair, Jr.

Q. Are you employed by the Curtis Publishing Company?

A. That's right.

Q. In what capacity?

A. I am editor-in-chief of the Curtis Publishing Company, sometimes called editorial director, also.

Q. How long have you been with Curtis, Mr. Blair?

A. Since March of 1957.

Q. What was your job—what were you employed as, that is; what position did you occupy, when you were first employed?

A. I was first—I was a staff writer in the Washington office.

Q. Who was editor of the Saturday Evening Post at that time?

A. Mr. Ben Hibbs.

Q. Who was president of Curtis?

A. Robert E. MacNeal.

Q. Mr. Culligan is presently president of Curtis?

A. Mr. Matthew J. Culligan, I believe—I believe the Board of Directors made him Chairman of the Board this week. I think Chairman of the Board is his correct title.

Q. Who is President of Curtis?

A. I think he is President and Chairman of the Board.

Q. When did Mr. Culligan first come with Curtis as President?

A. July 9, 1962.

[fol. 932] Q. And he replaced—

A. Mr. Robert MacNeal.

Q. Was there also an editorial change made at the time Culligan came with the Post, or who was out at that time?

A. The editor of the Post at the time Mr. Culligan came to Curtis was Mr. Robert Lee Sherrod, born in Georgia.

Q. Mr. Sherrod is no longer with the Post.

A. Yes, he is. He is the editor-at-large of the Post.

Q. Editor of what?

A. Editor-at-large. He is a roving editor, around the world.

Q. Who is presently editor of the Saturday Evening Post?

A. I am.

Q. How long have you been editor?

A. Well—

Q. Of the Post, that is.

A. Well, let me see. I have to think a minute. In March of 1962, I was made managing editor of the Saturday Evening Post, and in June of 1962, I was promoted to Vice-President and Editorial Director of Curtis, and on or about October 24th, when Mr. Sherrod began his travels. I assumed the responsibility as the chief executive of the Saturday Evening Post, editorial executive. So that in effect I have been the editor since October of 1962, although it really doesn't show in the masthead that way.

Q. Are you also editor of the other four publications or any one of the other four Curtis publications?

A. No, I am not. I am editorial director and, as such, I have responsibilities for the editorial content of the other Curtis publications, but I am not a day-by-day editor of [fol. 933] the other four magazines, as I am on the Post.

Mr. Smith: Go to Page 11, line 17.

By Mr. Smith:

Q. Were you directly involved in the employment of Mr. Graham to write this Butts story, this Butts-Bryant story, in his selection as a writer?

A. No.

Q. You were not?

A. No.

Q. Who—

A. Let me make this clear. As Chief executive officer of the Saturday Evening Post I bear the responsibility for what is published in the magazine. I do not—I cannot, on a day-to-day basis, make assignment of articles or editors and so on.

Q. I can appreciate that.

A. Yes.

Q. What I want to know is who was directly in charge of that particular piece of writing?

A. That particular project?

Q. For you or for the magazine?

A. For me?

Q. Yes.

A. Well, directly responsible to me would be Davis Thomas, who is the managing editor of the magazine.

Q. Was he more or less in touch with this particular article, in making the decisions concerning the article, for you and thus for the magazine?

A. Yes.

Q. Was Roger Kahn working with him in that direction? [fol. 934] A. For him. Roger Kahn is a sports editor who works under Thomas, and, of course, Graham was working for Kahn, in effect.

Q. Did you have anything to do with the decision, the final decision to publish the article?

A. Yes, I did. Before the article was committed to—irrevocably committed to press, I read it, all of it, and at that time I could have made the decision to pull it out, but you might say by not making the decision to pull it out, it had my approval.

Q. In other words, Davis Thomas made the decision to publish it and you didn't veto it; is that right?

A. That's about it.

Mr. Smith: All right. Page 17, Line 4.

By Mr. Smith:

Q. Will you list the five magazines that the Curtis Publishing Company publishes?

A. Yes. The Saturday Evening Post, The Ladies Home Journal, the American Home, Holiday and Jack and Jill, a children's publication.

Q. Are any of these five magazines what you might call showing a profit at this present time, operating in the black?

A. However, I will answer the question this way: that for the first quarter of 1963, Curtis Publishing Company

showed a loss of about \$1.1 million, compared to a loss in 1962 for the same quarter of \$4.7 million.

Mr. Smith: On Page 20, Line 9—Line 8.

[fol. 935] By Mr. Smith:

Q. From 1962 to 1961, there was a decline of approximately eighteen million in advertising revenues. Is that true?

A. In the 1961, by the same PIB figures, I believe the figure was eighty-six million.

Q. Do you also recall what it was for 1960?

A. I think it was one hundred, six million.

Q. One hundred, six million?

A. Yes.

Q. I believe you said that Mr. Culligan came in as President of Curtis in March of 1962?

A. No, in July.

Q. In July of 1962?

A. Yes.

Q. Now, you were made a vice-president in June of 1962?

A. That's right.

Mr. Smith: Go to Page 29, Line 4.

By Mr. Smith:

Q. Now, what connection is there between circulation and the amount of lineage and the revenue that you can expect from advertisers? What importance is placed on circulation by advertisers?

A. Well—

Q. Is this not one of the factors that affects advertising revenue?

A. In marketing advertising?

Q. Yes.

A. Definitely so. Your demography, the profile of your subscriber, where he is, who he is, whether or not he lives in a metropolitan or rural area, the very size and numbers; [fol. 936] and also part of the demography would be the

income level, education level, et cetera, et cetera. The size of your circulation. The entire advertising rate structure is based on how big your circulation is. In other words, if you have a circulation of three million, then an ad might cost fifteen thousand dollars in your magazine. But if you have a circulation of six million, it costs thirty thousand dollars. So that it is absolutely vital. Together with the demography, I mean. I mean, all circulation in Russia would not be appealing to General Motors. •

Mr. Smith: Page 31, Line 10.

By Mr. Smith:

Q. Well, your advertising revenue has fallen considerably, as you testified, since 1960, to a—from an all-time high?

A. No. One hundred six million to, 1960—fell to eight-six in 1961 and about sixty-six or sixty-eight or sixty-nine in 1962. That is revenue.

Q. So that you aren't satisfied with that trend, are you, Mr. Blair?

A. I mostly certainly am not, no.

Q. And were you—

A. Would you be, if you were a responsible—

Q. No, sir, I would be most unhappy, as I am sure you are. Is that not a fair statement?

A. Right.

Q. I mean, this is an integral part of running a profitable operation, is it not?

A. Absolutely. Let me say that I am not unhappy, but I would be hopeful we could have more advertising revenue in the Post.

[fol. 937] Mr. Smith: Page 40, Line 13.

By Mr. Smith:

Q. There is one further statement I wish to ask you about, and that is in the March 29, 1963 issue of Time. You were quoted as saying:

"The final yardstick," said Blair, in a memo to this staff, "is the fact that we have about six lawsuits pending, meaning that we are hitting them where it hurts . . ."

Did you make such a statement?

A. I didn't make the statement, but I wrote a memo—

Q. I am sorry, you did or didn't make it?

A. I wrote a memo. I didn't make the statement. I wrote a memo. But that statement is not accurate. The quote is not correct.

Q. Was the statement taken from a memorandum?

A. Yes.

Q. Was the memorandum in writing?

A. Yes.

Q. Do you have a copy of the memorandum?

A. I could get you one. I don't carry it around with me.

Q. Sir?

A. I could get you one. I don't carry it around with me.

Q. All right, sir, will you make that available to us?

Mr. Smith: Mr. Strubing said "Yes".

A. (By the witness) Yes, surely.

"The final yardstick is the fact that we have about six [fol. 938] lawsuits pending, meaning that we are hitting them where it hurts . . ."

Now, where is that incorrect? How is it inaccurate?

A. I think—I would have to get the memorandum, but I think the sentence goes on to say:

"... with solid, meaningful journalism."

Q. Well, who is them, "hitting them"?

A. "Them" is the general phrase to refer to the whole United States of America.

Q. Hitting everybody in America where it hurts? Is that the meaning that you intended to convey?

A. Not quite so literally as this: You are really asking me now about the whole philosophy of this magazine when

you ask a question like that. I can't answer without telling you what my philosophy is.

Q. Is the quote about the number of lawsuits incorrect?

A. Yes.

Q. There are more than that?

A. Less.

Q. Less than that?

A. Yes.

Q. All of these are libel suits?

A. Yes.

Q. Sir?

A. Yes. But I mean the figures aren't accurate.

Q. Among them is the one Wally Butts filed against the Post—

A. No, no.

Mr. Smith: Page 43, Line 10.

[fol. 939] By Mr. Smith:

Q. Do you recall the writer that interviewed you for that article or that quotation?

A. No one interviewed me.

Q. No one interviewed you?

A. No.

Q. You made the memorandum available?

A. I certainly did not. Somehow the memorandum found its way to Newsweek.

Q. It wasn't intended, really, for publication?

A. Absolutely not. The entire memorandum, if you read it, as I assume you will in time, was meant to be a laudatory, congratulatory memorandum to the staff on the magazine that they were putting out, and the lawsuits, I think that was actually a facetious—to tell you the truth, I think that was actually facetious.

Mr. Smith: Next page, Line 17.

By Mr. Smith:

Q. And you were not being facetious when you used the phrase, "sophisticated muckracking"?

A. No.

Q. You meant it then?

A. Yes.

Q. And you mean it now?

A. I mean it now.

Mr. Smith: Page 48, Line 11.

By Mr. Smith:

Q. To get away from muckraking, sophisticated or otherwise, you have been quoted as being concerned with the [fol. 940] image of the Post and in trying to get a new image, portray a different type of magazine; is that correct?

A. Very definitely, yes.

Q. Generally speaking, you want to change the image of the Post?

A. I did change the image of the Post.

Q. All right.

A. "Image" is very bad. It is worse than "muckraking."

Q. I agree. Is the March 23, 1963 issue of the Post representative of the new type magazine that Curtis is interested in publishing, that is, the history—

A. Could I refresh my memory by looking at it?

Q. Yes.

A. Does this contain an article of some interest to you?

Q. This is the Butts issue.

A. Oh, yes. I would say that we have perhaps come perhaps 25 per cent of the way with this issue.

Q. This is not representative of the "image" that you are trying to—

A. I would say we have gone 25 per cent toward the goal of the magazine that I envision.

Q. In other words, this issue is a step in the right direction, in your opinion?

A. Yes, along the way, yes.

Mr. Smith: Page 53, Line 8.

By Mr. Smith:

Q. I am reading now from—I think it is one edition of Webster's Dictionary, in which it is stated:

[fol. 941] "The original allusion . . ." and this is "muck-raking" ". . . was to a character in Bunyan's Pilgrim's Progress so intent on raking up muck that he could not see a celestial crown held above him." I believe you alluded to that yesterday, did you not?

A. Yes.

Q. You have no quarrel with that particular statement?

A. No. That is the origin of that.

I am not sure. It might have been in Shakespeare prior to that; I don't know.

Q. The dictionary states further,

"On April 14, 1906, President Roosevelt delivered a speech in which he used the term 'muckraking' in attacking the practice of making sweeping and unjust charges of corruption against public men and corporations, after which the term obtained wide currency." Do you have any quarrel with that particular definition of muckrake," or the use of the term "muckrake"?

A. No. I mean that was the way Roosevelt used it. I am pretty sure of that. I have never read the speech or anything.

Q. You were acquainted with the term, were you not, Mr. Blair, prior to using it in the interview which led to the article in Newsweek on November 19, 1962? You were acquainted with the term? The most common usage of the term "muckrake" at that time?

A. I was, yes.

Q. And this you testified yesterday, by adding to the term the word "sophisticated" you sought to alter the most common usage of the term "muckrake"; is that correct?

A. That is really correct, yes.

Q. Now, let me ask you if you agree with this. I am [fol. 942] reading from the same dictionary, which, as I

said, is an edition of Webster's. Here the term "sophisticated" is defined, one, as follows:

"Not in its natural, pure or original state, adulterated, amended unwarrantedly." Do you have any quarrel with that particular definition of "sophisticated"?

A. Well, let me say this, that the word "sophisticated" has many connotations, and very definitely I won't prolong this with argument and semantics here, but as for that definition that was not the definition I had in mind when I used the word "sophisticated."

I was thinking in terms, for example, you would talk about the Nike Zeus or the Skybolt as being a very sophisticated weapons system. By that I meant to imply complex, high order of development, rather than that.

I believe the word "sophisticate"—the origin of that word must be sophistry, is it not?

Q. Let me read this. "Sophistication" is defined:

"1. sophistry; sophistical reasoning; misrepresentation or falsification and argument, also a quibble; a sophism."

Do you adopt that definition of the term "sophistication"?

A. Well, I know that is—I mean, I can't quarrel with the dictionary, but very definitely, you must know that in common usage in our language, if you talk about a sophisticated person or a sophisticated society or a sophisticated weapons system, as I was with the Newsweek people, and I went on in this quote as to what I meant by "sophisticated," I was talking about something else, which is, you know, not quite—

Q. Well, you were speaking in the sense of expose, were you not, and in the sense of provocation?

[fol. 943] A. I was speaking in the sense of—if you want to use the word "expose", I want to look that up.

Q. Did you use the word yourself in this interview?

A. "Expose"?

Q. Yes.

A. I probably did.

Q. I am reading from the Newsweek article and I have written it down in longhand and I think it is accurate—this is from Newsweek, November 19, 1962:

“Blair says he intends to ‘restore the crusading spirit. . . .’”

A. Right.

Q. (continuing) “. . . the sophisticated muckraking, the expose in the mass magazines. . . .”

A. Yes.

Q. Is that accurate as far as you can recall?

A. I am sure it is. The interview was an hour and a half or something like that, and I certainly would not quarrel with the fact that I said that during the course of it.

Mr. Smith: Go to the bottom of that page, Line 22.

By Mr. Smith:

Q. In the same sentence with “sophisticated muckraking,” the term “expose in mass magazines” was used?

A. Right.

Q. And these were used in aid of one another; is that right? “Expose” is a further amplification of your use of the term “sophisticated muckraking”; isn’t that true?

[fol. 944] A. Talking precisely to the point here, yes, but I think in all fairness, we are just dealing with words, and you have to—maybe that is what you lawyers do. I am sure you do.

Q. You are very much concerned with words yourself, are you not?

A. Yes, but I am also concerned with the development of what are we talking about, rather than just the words themselves.

Mr. Smith: All right; go to Page 59, Line 10.

By Mr. Smith:

Q. Further quoting from this same Newsweek article of November 19, 1962, the writer says, and I quote directly from the article, which is quoting you:

"We are going to provoke people, make them mad.'"

A. Yes.

Q. Did you make such a statement?

A. I am sure I did. I would not quarrel with that.

Q. You don't quarrel with the statement now, do you?

A. No.

Mr. Smith: Page 70, Line 5.

By Mr. Smith:

Q. A statement is contained in the Butts' article:

"But careers will be ruined, that is sure." You have already testified that you read the article prior to publication.

A. Yes.

[fol. 945] Q. Do you have any quarrel with that statement?

A. May I see the statement?

Q. Right here.

A. Oh, I see, it is the windup, yes.

Q. Right here?

A. Well, I have no quarrel with that.

Q. Is there any question in your mind but that careers have been ruined as a result of this article?

A. Well, I really don't know, because I don't know the status of the employment—career—here I use the term "career" to apply to employment—I don't know the status of all these people.

Q. This statement says, "... careers will be ruined, that is sure," and it can't apply but to two people, and that is Wally Butts and Bear Bryant. Would you not agree with that?

A. Well, I would say that they were the principal figures in this story and I can't quarrel with that, no.

Q. Butts' career is one of the careers that reference is made to in that statement, isn't that correct?

A. I think so.

Q. Is there any question in your mind about that?

A. I don't think so.

Mr. Smith: Page 73, Line 8.

By Mr. Smith:

Q. Were you also concerned that this matter be checked out thoroughly?

A. Absolutely.

Q. As to the truth of the article, prior to publication?

A. Absolutely, as we do with every article.

Q. Did you impress this on your staff, that they must [fol. 946] be absolutely certain of what they published in this Butts article, to satisfy you as to the truthfulness and accuracy of it?

A. Absolutely, as we do with every article.

Mr. Smith: 75, Line 14.

By Mr. Smith:

Q. Yesterday I asked you about an inter-office memo which was reported in one of these national publications, a quotation from you, and you have been kind enough to supply that to me today, which I have identified as Exhibit P-2. Is that the memorandum?

A. Yes, it is.

Q. Is that your memorandum?

A. That is my memorandum.

Q. These are your words?

A. My words.

Q. This is the entire memorandum?

A. My words, not very brilliant, but mine.

Q. This was not prepared for publication, but in some fashion it leaked or got out of the office here; is that right?

A. That's right, yes—no, it was strictly a strictly inter-office—I believe I started the memo by saying "I wish I had time to visit each one individually," but I didn't.

Q. One statement in the memo which we discussed yesterday, and I don't recall just what you said, but it is my im-

pression that there was some question as to whether or not it was accurate.

A. Yes.

Q. Here is the statement. Let me read it again:

"The final yardstick: We have about six lawsuits pend-
[fol. 947] ing, meaning we are hitting them where it hurts,
with solid meaningful journalism."

A. Yes.

Q. Now, that is an accurate quotation, is it not?

A. That is exactly what I wrote, yes. What I guess is inaccurate about it, I guess, is the number of lawsuits.

Mr. Smith: 81, top of the page.

By Mr. Smith:

Q. Do you remember a phone call from Wally Butts' daughter? Did you have a phone conversation with Jean Butts?

A. Yes, I did.

Q. Do you remember about when that was?

A. This is the girl that lives in Mississippi?

Q. Yes.

A. Yes. I really don't remember when that was. It was—I have a recollection it might have been like a Thursday or sort of in the middle of the week, like.

Q. Was it prior to the publication of the Butts' story?

A. Yes, it had to be, yes.

Q. What was—

A. She wanted—she was trying to find out if we were doing the story, I think, or if we were, when it would be out, something like that. It was a very incoherent conversation because she was very emotional and crying, and I had a hard time determining exactly what her point was here.

Q. The substance of the conversation was a request on her part, was it not—

A. Well,—

[fol. 948] Q. (continuing) —direct to you?

A. Well, my impression was that she was trying to find out (a) if we were doing an article involving her father, and (b) if we were, when it was coming out. It seemed to me that was what she was trying to get at, but it would be presumptuous here or any other time for me to try to interpret what any woman is really getting at when she talks to you.

Q. Well, you told her (a) that you were going to do an article, and (b) that it was coming out soon, didn't you, or gave her the publication date, perhaps?

A. No, I don't think I did give her the publication date.

Q. Did you tell her an article was going to be published concerning her father?

A. I swear to you, I can't remember. I am not trying to dodge your question. I am—I get a hundred phone calls a day, you know, more or less, and it is hard to remember, but I—I don't know whether I told her specifically whether we were coming out with this article or not. Definitely, I know I would not have told her when, you know, if I said we were publishing it, because we don't ever give a release as to when we are going to publish something, to anyone.

This was a strange and almost incoherent telephone conversation, where I couldn't really figure out what she was after. She was crying through the whole thing and—

Q. You got the impression that she was asking you not to publish the article?

A. Oh, beyond any doubt, that if we had any—I mean, her whole thing was to try to find out if we were, and certainly the undertones of the thing, all this weeping and crying was that if you—you know—"Please don't."

[fol. 949] Q. If you do publish—

A. "If you plan to, please don't."

I didn't make any notes on this conversation or anything else, I mean. And I don't know when the telephone conversation took place, and I am sure that you could look it up in the—I understand the Telephone company keeps very accurate records of the telephone conversations, long-distance calls.

ROGER KAHN, called as a witness on behalf of the Plaintiff, after having first been duly sworn, testified by deposition as follows:

Cross examination.

By Mr. Lockerman:

Q. Will you state your full name, please?

A. Roger Kahn.

Q. How old are you?

A. 35.

Mr. Smith: Line 19.

By Mr. Lockerman:

Q. How long have you been with the Post?

A. Since January 1st of this year.

Q. What is your title with the Post?

A. On the masthead it is listed as senior editor and in my contract with the Post it is listed as sports editor. You can probably define it as senior editor in charge of sports.

[fol. 950] Mr. Smith: Page 7, Line 13.

By Mr. Lockerman:

Q. When did you first receive any information concerning the Wallace Butts-Paul Bryant matter that was the subject of the article in the Post of March 23rd of this year?

A. It was on a Tuesday. Without a calendar—

Q. Here is a calendar.

A. Thank you.

It would have been on Tuesday, February 19th.

Q. How did you receive the information that you did get on February 19th, concerning the matter?

A. I was about to go to lunch when Davis Thomas, the managing editor of the Saturday Evening Post, came to my office and reported to me that he had heard this—had

heard of the phone call, and that we were to talk after lunch, which I indeed agreed we ought to.

Mr. Smith: Line 16.

By Mr. Lockerman:

Q. Then I assume you did go to lunch and conferred with him again after lunch?

A. Yes, after lunch, Mr. Thomas, Mr. Don A. Schanche, who is the executive editor here—the three of us met, conferred, and discussed what we had and what we ought next to do.

Mr. Smith: Next page, Line 16.

[fol. 951] By Mr. Lockerman:

Q. Did Mr. Thomas tell you where he had gotten the information that he was then giving to you?

A. Yes, sir. From Mr. Strubing.

Q. Who is Mr. Strubing?

A. Mr. Strubing is an attorney for the Saturday Evening Post.

Q. Mr. Strubing wasn't present, was he?

A. No, he was not.

Q. What did Mr. Schanche have to say about the matter at that time?

A. Well, we all felt, each of us, that it was well to look into and it is hard to recreate what each of us said, but we did feel a certain skepticism about the story at that time, but it was a story that had to be checked out.

We realized that it was a very unusual story, not something that was in any way routine. But we did feel, the three of us discussing this, that we had indeed to proceed on investigating the story.

Q. But you were quite skeptical about it, the correctness of what had been told to you?

A. Not quite skeptical. Skeptical and surprised.

Q. On that date of February 19th, when you were conferring with Mr. Thomas and Mr. Schanche, were you aware of the lawsuit that was pending against the Saturday Evening Post and Furman Bisher, the sports editor of the Atlanta Journal, involving an alleged libelous matter at that time?

A. I was aware of it in broad outline. I had not been sports editor when Mr. Bisher's article appeared, so that I was not conversant with all the details. But I was aware that there was such a suit, yes.

[fol. 952] Mr. Smith: Page 12, Line 3.

Q. Had you discussed with Mr. Thomas and Mr. Schanche the fact that Frank Graham was your choice?

A. Yes, I did.

Mr. Smith: Page 14, Line 15.

By Mr. Lockerman:

Q. Had you ever used him on any assignment in which you anticipated or knew that by writing the type of story that would be involved, that careers and characters would be ruined?

A. I didn't really know what type of story Mr. Graham was going to write. Mr. Graham didn't have an assignment to write a story. Mr. Graham had an assignment to investigate as well as he could and if in his judgment there was a story, he was to proceed.

Mr. Smith: Page 17, Line 24.

By Mr. Lockerman:

Q. Did you instruct him that you wanted him to make a very thorough investigation of this matter?

A. As thorough as he could.

Q. As thorough as he could?

A. As thorough as he could make, yes.

Q. I believe you used the expression a moment ago, in speaking of what you wanted Mr. Graham to do, the term

that you wanted him to go down there and dig; is that correct?

[fol. 953] A. I don't know if I used that term, but that would be a fair paraphrase of what I meant, yes.

Q. By using that term, you meant to really dig into the story and find out all the facts about it?

A. All the facts that were available, yes, indeed.

Mr. Smith: Page 21, Line 21.

By Mr. Lockerman:

Q. Going on with that same discussion, what else was said by Mr. Thomas or Mr. Schanche to you and Mr. Graham about this matter?

A. It was general agreement that Frank's first course of investigation should be with Mr. Howard and with Mr. Burnett. There was probably some fee discussion for Mr. Graham.

Q. Give us your best recollection of that.

A. I said something like, "I won't give you a fee now. If the story does not work out, Frank, it will depend on how much time you spend and how hard it is."

. It is standard in many magazine relationships that you don't have a contract. You have a handshake.

Q. A what?

A. Handshake. Agreement between writer and editor who have worked together before. You don't have a formal contract on most magazines.

There was some discussion about the fee to be paid Mr. Burnett. I believe that was handled by Mr. Thomas. Mr. Schanche was going to work on the contract which was to be made—drawn between Mr. Burnett and the Saturday Evening Post, and we told Frank that if the story seemed to be working out, not to worry about money, that that was [fol. 954] not his function. Not to worry about a rate for what Mr. Burnett would be paid. That was the Post's function and not his.

Q. Then it was your understanding at that time that the story was for sale to the Post; that is correct, is it not?

A. That Mr. Burnett's information was for sale, yes.

Q. By Mr. Burnett?

A. By Mr. Burnett or Mr. Howard.

Q. Or Mr. Howard?

A. Yes.

Q. And that was on February 20th?

A. That's right.

Mr. Smith: Page 28, Line 4.

By Mr. Lockerman:

Q. Now, what instructions did Mr. Thomas or Mr. Schanche give either you or Mr. Graham in that conference about what the two of you were to do on this very unusual matter?

A. Frank was to go to Atlanta. If an affidavit were obtainable from Mr. Burnett, he was to get the affidavit. He was to determine all of the circumstances that he could determine about the intercepted phone call. He was, if possible, to get a copy of Mr. Burnett's notes on the intercepted phone call. He was to check the library and the newspapers for information on the game; and he was, generally, while down there, since he had never covered SEC football, to familiarize himself with newspaper clips, through newspaper clips, as best he could with the teams.

[fol. 955] Mr. Smith: Page 30, Line 5.

By Mr. Lockerman:

Q. What, if any, instructions were given by either you or Mr. Thomas or Mr. Schanche as to whether or not Mr. Graham should refrain from interviewing Coach Bryant?

A. Well, at this point he was going only to Atlanta to see what he could get on the story in Atlanta. A trip to Alabama I don't believe was mentioned.

Q. You had previously already told Mr. Graham not to interview Coach Butts?

A. Yes.

Q. I believe you just stated that a moment ago.

A. Yes, that's right.

Q. Are you familiar with the geographical relationship of Birmingham with reference to the City of Atlanta, generally?

A. Yes.

Q. Were you familiar with the fact that either from Atlanta to Birmingham or to Montgomery is only a matter of about less than an hour's flight time by air?

A. I knew it was a short flight.

Q. You did know that?

A. Yes, I did.

Q. You were also familiar with the fact that telephone communications could be had from Atlanta to almost any point in Alabama?

A. Yes.

Q. That goes without saying, doesn't it?

A. Yes, indeed.

Q. And you were familiar also with the fact that the Town of Athens, Georgia, where the University of Georgia [fol. 956] is located, is also a very short distance from the City of Atlanta?

A. Yes.

Q. And that Tuscaloosa is a very short distance from Birmingham?

A. I don't know where Tuscaloosa is, but I will take your word for it.

Q. You knew it could be reached in a relatively short time?

A. I knew it was in the same state, yes.

Q. Did you specifically instruct Mr. Graham to go only to the City of Atlanta?

A. Only to the City of Atlanta? I believe I did, yes. Bearing in mind that this was in the nature of a preliminary—could have been a preliminary investigation. We

- had no idea for sure what Mr. Graham would get. It's in the nature of journalism that you first familiarize yourself with as much background as you get before you make any decision on how you will finally handle the stories, so that these instructions were to go to Atlanta, see Mr. Howard, see Mr. Burnett and if Mr. Graham called and said, "I have to go somewhere else," that could have been changed.

Q. There would have been no objection to his going somewhere else?

A. No economic objections, no, it would depend on how the story developed.

Q. Of course, the story, as you already said, was a very unusual type of story, wasn't it?

A. I have never seen another story like it.

Q. Did you place any time limitation on how much time Mr. Graham was to spend in Atlanta or on this investigation?

A. ~~On~~ this story, I think we wanted him to move with all deliberate speed, and get back as quickly as possible [fol. 957] after doing as complete an investigation as he could. There was no specific date, no.

Q. But you wanted him to make a complete investigation?

A. Yes.

Q. Then he was not given any time limitation within which to do that, was he?

A. I don't believe he was, no.

Q. Now, have you told us all that was said by Mr. Thomas and Mr. Schanche or yourself to Mr. Graham on February 20th, when you were discussing this matter?

A. There was a little small talk—not small talk really: "Be careful, Frank, this is a big one." Which I said in more of an informal way to him. You know, "Be careful, do a good job and let me hear from you." That was about all.

Q. And to dig into the story and make a thorough investigation and get all the facts?

A. "Be careful, Frank, this is a pretty big story." I said something like that to him.

Q. And you had reference to making a careful investigation; is that right?

A. Oh, yes.

Q. Because you were interested in getting the truth of the entire matter, weren't you?

A. Yes, sir.

Q. What amount was discussed as to what would be paid for the facts that you understood at that time to be for sale by Mr. Burnett?

A. I believe Mr. Schanche drew the contract between—I don't know whether it was between Mr. Howard—I guess it was between Mr. Burnett and the Post—and the sum I think was \$500—I am sorry—\$5,000.

[fol. 958] Q. Was that contract drawn at that time for Mr. Graham to take along with him?

A. No, it was not.

Q. And that would have been on the 20th; is that right?

A. On February 26.

Q. Was there any breakdown of the five thousand dollars in any periodic payments or was it just a lump sum of five thousand dollars?

A. I believe really Mr. Schanche would be the best source because I believe he wrote the contract, but I believe that it was in two installments, one of which would be payable on the furnishing of information which in our editorial judgment constituted a story, a printable story, and the other sum would be paid on or about the publication date, when the story was exclusively in the Post.

Q. And of course it was—provision was made for it to be an exclusive matter, wasn't it?

A. We aren't against exclusives, no. Certainly we were not upset that the story wasn't everywhere else.

A. We would like it to be. We wanted to have it to ourselves, yes.

Q. And that is the way it turned out, wasn't it?

A. Yes, it was. Although there were numerous offers of "Please make a deal and let us have your story" before the story came out, from other magazines.

Q. Now, what discussion was had at that time, still talking about the 20th, about a party by the name of Milton Flack, in this matter? You remember his name, don't you?

A. Yes, indeed. It is a very unusual name for a publicity man. I know that the name amused us. Flack, in the show business argot, is a publicity man.

[fol. 959] Q. Is that why you say it was unusual?

A. Yes, it is kind of funny, because a movie press agent is called a flack.

Q. What does that mean?

A. It is a press agent and not a public relations counselor. A flack is someone who comes around from the studio to push the picture. I am not sure—I guess it is spelled "f-l-a-c-k," too. It is a kind of Hollywood term.

Q. Does it have the same connotation as a promoter, so to speak?

Q. Works for a promoter?

A. A press agent.

Q. A press agent is more or less a promoter, too, is he not?

The Court: What is the purpose of going into what Mr. Flack's name means? We are wasting time here. Let's go on.

Mr. Smith: I think we have just about run out of that, Your Honor.

The Court: All right, sir.

Mr. Smith: Line 20.

By Mr. Lockerman:

Q. What was said about payments to be made to Mr. Flack for whatever part he played in this matter?

A. At that time there was no contemplation of paying Mr. Flack.

[fol. 960] Q. Well, when did the contemplation of paying him money in this matter come up?

A. Some time afterwards, and Mr. Thomas handled that particular payment, and you would have to get from him

exactly when. I am sure there is a record of when he was paid.

Q. But Mr. Flack was paid some amount of money?

A. I believe five hundred dollars eventually, yes.

Q. Your recollection is five hundred dollars?

A. Yes.

Q. Eventually?

A. Yes, sir.

Q. What is your understanding as to the purpose for paying him five hundred dollars?

A. Gosh, I think, you know, something would go with the check which would explain that. Payment for editorial services rendered, for helping.

Q. Did he render editorial services in connection with this matter?

A. I think, yes, he talked with Mr. Graham.

Q. He talked with Mr. Graham?

A. Yes.

Q. Do you call that editorial services?

A. Backgrounding is a service for which we will pay under many circumstances.

Q. Speaking of background, what did you know about the background of Mr. Milton Flack?

A. Personally, nothing, nothing about his background.

Q. What do you know about his background now?

A. Well, that he has been involved in a number of adventures, that germicidal venture of his—well, that he has been involved in a number of business ventures, that is all that I can really say.

[fol. 961] Q. But at that time you didn't know anything about Mr. Flack?

A. No.

Mr. Smith: Drop down to line 20.

By Mr. Lockerman:

Q. You knew at the time that you were having these discussions with Mr. Graham on the 19th and the 20th that

this alleged intercepted telephone conversation had arisen in a rather unusual manner, didn't you?

A. Yes.

Q. I assume, then, that you knew that Mr. Burnett was claiming that he had listened in on an alleged conversation between Coach Butts and Coach Bryant?

A. Yes. Now, at one point we had been told that the conversation was overheard, and I had the initial impression that it was a conversation overheard—I believe we were told “by a student, and—”

Q. By a student?

A. By a student at the University of Georgia. The initial report was not what the facts later brought out.

Mr. Smith: Next page, Line 3.

By Mr. Lockerman:

Q. When did you get the information about Mr. Burnett allegedly overhearing it?

A. I believe on the 20th.

Q. Where did you get that information from?

[fol. 962] A. I heard it from Mr. Thomas.

Q. Well, had you in the meantime talked with Mr. Howard?

A. No.

Q. Mr. Thomas was doing the talking?

A. Yes.

Q. During that period of time?

A. Yes.

Q. With Mr. Howard?

A. No. With Mr. Strübing.

Q. Mr. Thomas was calling Mr. Howard about this matter in Atlanta?

A. No.

Q. And then you learned, apparently, that one George Burnett had allegedly intercepted a telephone conversation between Coach Butts and Coach Bryant?

A. Yes.

Q. Is that correct?

A. That's correct.

Q. When did you understand that the interception of the telephone conversation had taken place?

A. Eight days before the game, which I believe at that —at that point I don't believe I knew the date, any more than that it was several days in advance of the game.

Q. And you are now referring to the 1962 game between the University of Georgia and the University of Alabama?

A. Yes, sir.

Mr. Smith: Next page.

[fol. 963] By Mr. Lockerman:

Q. Now, knowing that Mr. Burnett occupied the status of an eavesdropper onto an alleged telephone conversation between two coaches in the Southeastern Conference, being made from one state to the other, what instructions did you give Mr. Graham about making a thorough and complete investigation of the eavesdropper?

A. I told him to—along the lines of—"check out Mr. Burnett."

Q. Is that about all you told him?

A. That's right.

Mr. Smith: All right, go to page 51, Line 11.

By Mr. Lockerman:

Q. I believe that you had something to do with the editorial that appeared in the April 27, 1963 issue of the Post entitled "The Name of the Game"?

The Court: Just a moment. Are we going into that editorial?

Mr. Lockerman: That is in the deposition, Your Honor.

The Court: All right, sir. I was under the impression that you were not going to get into that editorial.

Mr. Schroder: There were two of them.

[fol. 964] Mr. Smith: This will prove relevant.

The Court: I thought the editorial in the issue of April the 27th, that is the one I am referring to.

Mr. Schroder: The one we went into this morning was the other one.

Mr. Cody: My understanding is that that is out.

The Court: Sir?

Mr. Cody: My understanding is that that is out.

The Court: There was some discussion; I don't know which one it was. Could I see that one? I think it had some statements in there you wanted to exclude, but if it gets in there is going to be a wide door open.

Mr. Schroder: Probably still be here next week.

The Court: Yes, sir

Mr. Smith: Well, that covers only about one reference there which—

[fol. 965] Mr. Schroder: Pass on to the next one.

The Court: I would instruct the Jury to disregard the last question and answer propounded by Mr. Smith to Mr. Schroder who was reading the deposition in regard to any editorial later printed by the Saturday Evening Post.

Mr. Smith: We will go to Page 54, Line 11.

By Mr. Lockerman:

Q. After Mr. Graham got to Atlanta and undertook this investigation, when did you next hear from him?

A. There was a party in Brooklyn—as a matter of fact, it was for my sister's birthday, and I had said to Mr. Graham, "When you get back to New York, get in touch with me right away."

At this party, which was on the Saturday night which was the day after Washington's Birthday, February 23rd, I went to the party and Mr. Graham arrived presently and I said, still with a kind of journalistic skepticism, still with the skepticism of somebody who does indeed believe in football coaches and in integrity, I said, "Nothing much down there, Frank?"

And Frank said, "Nothing much except this affidavit," and he reached for it in his pocket as I am doing now, and held out a paper, and I said, "We will talk business on Monday."

Q. That was the first word that you had from Frank Graham from the time he left to go to Atlanta on this matter?

[fol. 966] A. Yes, myself, yes.

Mr. Smith: Page 56, top of the page.

By Mr. Lockerman:

Q. So that then he, so far as you know, was in Atlanta on the 21st?

A. Yes.

Q. The 22nd?

A. Yes.

Q. Of February?

A. Yes.

Q. And then he was back in New York, and at the party in your sister's house or for your sister on the 23rd?

A. On the evening of the 23rd, having, I believe, taken a late plane on the 23rd. By "late plane," I mean a plane at about the dinner hour.

Q. So that you didn't discuss the matter with him any further at the party and you told him that you would see him later?

A. That's right.

Q. When did you see him next?

A. Monday, on Monday, the 25th. He had been working through the weekend on a rough draft of his story. On this same Monday I received a call from Furman Bisher, who was known to me as a good reporter and a sports editor of the Atlanta Journal.

Mr. Bisher called. He was in town on some business. I don't remember exactly. He was in New York on some business, I don't remember exactly, and he called me and he mentioned vaguely a major story in the South involving

colossi of Southern Football, and did I know about it, and [fol. 967] was I interested in it? These were questions that Furman Bisher asked me.

Since at this time we were not certain what the story was or would be, and had decided on a policy of not discussing any of our reports with anybody, I said no, I didn't.

Mr. Smith: Go to Page 60, top of the page.

By Mr. Lockerman:

Q. Did Mr. Bisher name any names of the colossi that were involved?

A. No, sir.

Q. He didn't?

A. No. He just said he had a big story and I ought to know about it.

Mr. Smith: All right, sir, 63, Line 13.

By Mr. Lockerman:

Q. After talking with Mr. Thomas about your call from Furman Bisher, did you then call Bisher back that day and change the appointment that you had made for the 26th, or did you keep that appointment?

A. No, I changed it to the 25th.

• • • • •

ROGER KAHN, testified further by deposition as follows:

[fol. 968] Cross examination (continued).

By Mr. Lockerman:

Q. Did you or did you not feel that quotes from Alabama players, would also be significant as a part of this story?

A. Yes, I did.

Mr. Smith: Page 81, Line 23.

By Mr. Lockerman:

Q. You also knew at that time that Mr. Graham had reported to you that a man by the name of John Carmichael was supposed to have been present when the alleged telephone conversation was intercepted. You knew that, didn't you?

A. Yes, sir.

Mr. Smith: Page 100, Line 22.

By Mr. Lockerman:

Q. What do you mean when you say he would talk with those players or those coaches that good journalism would indicate?

A. If we could get Alabama players to talk about the specific coaching that they were given in the days leading up to the game, that would be helpful, too.

Mr. Smith: Page 112, Line 11.

By Mr. Lockerman:

Q. To what extent did they tell you that it was a fact [fol. 969] that Georgia didn't have anyone who could quick kick?

A. This is Graham quoting George Burnett.

Q. That is Graham quoting George Burnett?

A. Yes.

Q. And beyond that you did not go in your investigation to determine whether or not it was, in fact, true, did you?

A. No, sir, we accepted the statement from Mr. Burnett.

Q. You accepted that from Mr. Burnett?

A. Yes.

Q. Dealing next with the second point that you made, upon which you based your conclusion to accuse him of fixing and rigging, I believe you stated that it was based on the statement, again presumably by Burnett, that,

"Butts also said that Rakestraw (Georgia quarterback Larry Rakestraw) tipped off what he was going to do by

the way he held his feet. If one foot was behind the other it meant he would drop back to pass. If they were together it meant he was setting himself to spin and hand off."

That was very significant, I guess, from what you have said in convincing you that the game had been fixed and rigged?

A. It's one fact in many, is what it was.

Q. One fact in many?

A. One fact in many facts.

Q. It was one of the facts among those that you just named as having led you to this conclusion?

A. Yes, one of a half dozen facts.

Q. One of about a half dozen facts?

A. A half dozen or so, yes.

[fol. 970] Q. Did you check with Mr. Burnett any further to determine whether or not he had in fact heard Coach Butts make any such statements as that which I have just read and quoted from?

A. No, sir, I did not check any further.

Q. You now know, don't you, as a matter of fact, that no such statement was made by Mr. Burnett to Mr. Graham, don't you?

A. No, sir, I don't know that no such statement was made. I am under the impression that the statement, as published here, is incorrect, but I don't know whether it was an error by Mr. Graham, by Mr. Burnett. I understand, as I say, that this statement apparently is wrong.

Mr. Smith: Page 115, Line 17.

By Mr. Lockerman:

Q. Did you check to see whether or not in fact any passes were thrown to Woodward?

A. Into Woodward's zone?

Q. Into Woodward's zone.

A. No, sir.

Q. You didn't check on that?

A. No.

Q. Did you have anyone check on that?

A. No, sir.

Q. Did you, at any time before you made these charges for fixing and rigging against these two coaches, did you or did you have anyone review the films that were made of the game involved, to see actually what did happen?

A. I asked that that be done and I believe Mr. Bisher said they were unavailable.

[fol. 971] Q. But you did ask that that be done?

A. Yes.

Q. Who did you ask?

A. I think Mr. Bisher. I think on the Monday, the 25th, in that discussion, I think I asked Mr. Bisher to take a look at the movies.

Q. So you went ahead, though, and printed the story without having looked at the movies or without having had anyone look at them?

A. Yes, sir.

Mr. Smith: Page 118,—make that 121, Line 10.

By Mr. Lockerman:

Q. Then it is not unusual for one college football team to be defeated by another by such a lopsided score as thirty-five to nothing, is it?

A. No, it's not at all unusual.

Q. In the editorial block that you wrote for this story, on Page 80, to which we have referred, you meant by what you said there, did you not, to imply that this game had been fixed and rigged by these coaches because of some betting angle, betting by the coaches, didn't you?

A. No, I did not.

Mr. Smith: 129, top of the page.

By Mr. Lockerman:

Q. Did you have any information that there was any payment of any money or any other consideration that

passed between Coach Bryant and Coach Butts for the [fol. 972] fixing that you say that they entered into?

A. No, sir. No indication of any money changing hands.

Mr. Smith: Page 130, Line 13.

By Mr. Lockerman:

Q. Do you know now that since the publication of this article, that Coach Griffith has disclaimed having said that you quoted him as having said, that is:

"I never had a chance, did I? I never had a chance."?

A. I understand he has and I understand that Mr. Bisher, who was the source of that remark, affirms that it was said.

Q. But you do now understand that Coach Griffith denies that he made any such statement?

A. Yes, sir.

Mr. Smith: 134, Line 11.

By Mr. Lockerman:

Q. So the fact is that you had no evidence of any motive whatsoever for the fixing and rigging, as you claim, of the game?

A. No evidence of motive.

WILLIAM C. HARTMAN, JR. called as a witness on behalf of the Plaintiff after having first been duly sworn, testified as follows:

[fol. 973] Direct examination.

By Mr. Schroder:

Q. For the record will you please state your full name?

A. William C. Hartman, Jr.

Q. Where do you live, Mr. Hartman?

A. 342 Dearing Street, Athens, Georgia.

Q. Are you a graduate of the University of Georgia?

A. Yes; I am; Class of 1937, B. S. in Commerce.

Q. While at the University of Georgia did you play football?

A. Yes, sir; I did.

Q. What position did you play?

A. I played fullback most of the time. In my senior year, I played quarterback, halfback and fullback; not at the same time of course.

Q. You were the captain of the team in your senior year?

A. Yes, sir.

Q. And after you left the University of Georgia, did you play professional football?

A. Yes; I played tailback for the Washington Redskins in 1938.

Q. Where were you born, Mr. Hartman?

A. Thomaston, Georgia.

Q. You have been a Georgian most of your life?

A. Yes. I have lived in Thomaston, Madison, Milledgeville, and Athens.

Q. After you retired or left the pro ranks, did you then engage in coaching?

A. I became backfield coach at the University of Georgia January 1st, 1939.

[fol. 974] Q. How long were you on the University of Georgia coaching staff?

A. I was there from that date until January the 16th, 1942, when I was ordered to active duty as a Second Lieutenant in the Reserves. I returned about February 1st, 1946, and remained on the coaching staff until about December, 1956.

Q. And you then retired from the coaching profession?

A. Yes.

Q. And your business is now what?

A. I am a life insurance agent.

Q. And your headquarters are in Athens?

A. Right.

Q. How long have you known Coach Butts?

A. Since 1928.

Q. 1928. That was before he came to the University of Georgia?

A. Yes, sir. When I was playing high school football in Madison, why he was coaching at Madison A & M.

Q. When you were on the coaching staff there at the University, was Coach Butts at that time the head coach?

A. At Madison A & M. I did not go to Madison A & M.

Q. I don't believe you understood. When you returned from the Washington Redskins and joined the University coaching staff, who was the head coach at that time?

A. He had just been selected as head coach at the University of Georgia.

Q. Was Coach Butts the head coach during the entire period that you served on the staff?

A. Yes.

[fol. 975] Q. Did you—your name was mentioned here previously by Mr. Bolton, I believe, as being one that attended a meeting in the office of Mr. Barwick that was attended by Coach Butts?

A. Yes.

Q. Did you attend more than one meeting—

A. Yes.

Q. On this subject?

A. Yes.

Q. Now, Mr. Hartman, I think the meeting that was attended by Coach Butts, he only attended one meeting, did he not?

A. Coach Butts only attended one meeting.

Q. And that would be on Washington's Birthday, February 22?

A. It was Friday, February the 22nd.

Q. Will you, Mr. Hartman, tell us what was said by Coach Butts at that meeting as best you can recollect what it was.

A. Well, we started the meeting shortly after 10:00 o'clock, and we moved over from Cook's individual office

to Alexander Wilson's office across the hall, because it was a larger office. At the meeting, I was there, Cook was there, Dr. Aderhold was there, Mr. Bolton was there, Mr. Colwell was there, Jim Dunlap was there, Bernie Moore was there, and Coach Butts and myself.

Substantially what was said, Dr. Aderhold opened the meeting by stating to Coach Butts that they had had a very serious situation arise and he guessed that Coach Butts wondered why they had asked him to come over all the way from Athens to Atlanta to this meeting, and that Cook, as a law member or the only lawyer on the Athletic Board had done most of the investigation in this situation, that he [fol. 976] would ask Cook to state and give him some idea of what the meeting was about. And so, Cook took over and related to him that on such and such a date that a man had come forward named—no, he didn't call his name, I don't believe, at that moment—and stated that he had come forward with a story that he had overheard a telephone conversation between Coach Butts and Coach Bryant of Alabama, and that during the course of that conversation he had made certain notes on football terminology which he had brought forward to the University's attention, and that was the reason for this meeting.

Q. What did Coach Butts say when he was presented with that statement?

A. Well, actually, I believe, when Cook got to that point he either handed or handed the notes to someone and asked Coach Butts to look at them, and I was watching fairly closely at the time, because—if I may digress a moment, Coach Butts didn't have glasses, and he can't read that type of information without his glasses.

Q. How do you know that? Do you have some background?

A. Well, from 1950 to 1956 it was my duty in every game that we played to type on cards about that size—I don't know what dimension they would be, but cards that you could carry in your pocket, the offensive information and plays that we wanted to use in the game and the de-

fensive information and plays that we wanted to use in the game. This presented quite a problem, because if you were in San Francisco or Los Angeles, or wherever you might be, you had to look up a public stenographer, and it was always a real problem to get a public stenographer who had a typewriter with large enough type so that he [fol. 977] could see it, and we did type that information which is similar information to that contained in the notes on these cards, and we would give him a copy and he would keep them in his pocket, and we'd give a copy to several of the coaches, and the reason that, as I say, that I was wondering how he was going to read that, we had to double space the cards during the course of these ball games over a period of six years in the largest type available, and I was watching him at that point, and I believe, if I am not mistaken, that he borrowed J. D. Bolton's glasses to look at them, and my impression was that he looked at the front page and then he riffled through these succeeding pages, and I didn't think that he really had much knowledge of what information was contained in those notes at that point.

Q. What, if anything, did he say after he had, as you say, riffled through the notes or the sheets?

A. At about the time he got the notes and after he had looked at the front page, his remark was that he had talked with Bryant many times and that it was possible that a telephone conversation could have been overheard, and that he didn't even want to know the name of the individual concerned who overheard the conversation, but that it had been misconstrued, that he had—he had made many telephone conversations to Bryant, and I broke in at that time and I said I could—I knew from my own knowledge that since about 1948 or 1950 that Coach Butts had talked with Bryant many, many times and usually the football—the discussion was about football.

Back in, oh, the later 40's or the early 50's we had a play at Georgia called "37-H," which is a fullback off tackle with the right halfback diving into the line and blocking the de-

fensive guard. At that time it was a right unusual play, [fol. 978] because you didn't usually call on your half-backs to block a big guard as he dove into the line. And Kentucky, when Bryant was in Kentucky in the late 40's, actually that was the first time I ever saw that play, and I saw it in the movies of the Kentucky games, and I remember specifically at that time we took the play from the movies and used it, and I know at that time they had some discussion about 37-H, and over a period of time and since that time to the present he has talked to Bryant many times on football terminology.

Q. You being a coach in the past and being associated with coaches in professional and college ranks, is there anything unusual about coaches talking at some length about football in general?

A. It has always been true, and since World War II, when the T-formation came into play in the American picture, 98 per cent of the teams used the T-formation. That is the first time they had a real common language, because most of all of your T-formation plays have common names. A 29-tear play is probably the 29-tear play at Wisconsin, and this T-formation terminology came into being shortly at the end of the War or after the War.

Now, before that you had your single wing back; you had your double wing back; you had your short front; you had your Notre Dame box. Those plays were not easy to relate to each other.

When I was at Georgia playing under the Notre Dame box, running off a tackle was a 21-1 play; at the same time Alabama using the Notre Dame box it might be a 38 play. There was no similarity at all. But since the advent of the T-formation, there is a common language, and I met a high school coach on the street today, the chances are be- [fol. 979] fore we had talked very long I would ask him how the 31 trap was doing this year, and he would say, "pretty good," or "we are not getting the timing on the guard pulling."

Q. Does the University of Georgia, like universities throughout the country, hold any clinics during the summer attended by these high school coaches and other coaches throughout the area?

A. Since about 1946 or '47 we always had a clinic at the University and used the Georgia coaching staff in the lectures. I think probably that has been discontinued about 1960, but certainly from the time, a period of ten or eleven years there, we did have a coaching clinic, and attendance would be anywhere from 150 to 200 coaches, mostly high school coaches, in some cases college coaches, and the Georgia staff would lecture.

For example, if it was my job to lecture on pass defense, I would get up and say, "Here we are using a 5-4 defense pass, and if you are going to stop a 29 tear pass, you have to do this." The exact terminology is used that we used at Georgia, and it was copied down in many instances, and in many instances by the coach attending the clinics.

Q. The effect of which would be that high school coaches throughout the State would know the designation of Georgia plays?

A. Without question. They would have that in their notebooks by name, number and terminology. I was curious about this about three weeks ago and was playing golf with a high school coach and asked him what the 29 tear pass meant, and he said, "Of course, I know. I have got it in my notebook from your clinics." And I said, "How many [fol. 980] high school coaches would know that?" And he said, "Everyone, practically, that ever went through your coaching clinic."

Q. In these clinics, do the high school coaches throughout the area, are they also taught about the various formations that are used by the University of Georgia?

A. They are given verbatim our complete offense and defense. At that time it was generally in the spring and summer. There are really no secrets in football or any more since the moving picture taking of the games have

come into play. I would be able to almost diagram a Tech off tackle play right now, having seen them in the Georgia Tech-Georgia game. It is all basic terminology.

Q. After Coach Butts borrowed from J. D. Bolton his spectacles or glasses, as you say, to take a look at the notes, what did he say?

A. He said—

Q. Or have I gone into that?

A. He said substantially that, "I have talked with Bryant many times, and it is possible that this gentleman, whoever he is, I don't want to know his name, could have overheard a telephone conversation and misconstrued the football language that was in the conversation."

Q. Was there any suggestion by anyone present at that meeting that Coach Butts sign an affidavit?

A. Absolutely not. There was never a mention made of an affidavit, except in one connection, and that was with the affidavit that Burnett had made me ten days or two weeks previously, and there was no mention of an affidavit being required of him by anyone in the room.

Q. You, or are you familiar with the notes which Mr. [fol. 981] Burnett said that he made at the time of the telephone conversation?

Mr. Schroder: And, Your Honor, I do not intend to go through them one by one. I think we have had enough of that. But I did want to ask him some general questions.

The Court: Let me ask him something.

Examination.

By the Court:

Q. Mr. Hartman, you said the only mention of an affidavit in that conference was with reference to an affidavit which this other party, Burnett had signed; that is the only time?

A. That is the only time the word "affidavit" was used in reference to Burnett's affidavit.

Q. I believe you said his name wasn't mentioned at that time?

A. His name was not mentioned at that time.

The Court: What was your question, Mr. Schroder?

Direct examination (continued).

By Mr. Schroder:

Q. Take a look at Defendant's Exhibit No. 12, please, sir, which you now hold in your hands, and tell me whether or not you are familiar with copies of those that you have seen?

[fol. 982] A. Well, I have seen these and also copies too. Of course, it's been some time since I have seen them. There are two items in this that are untrue. One is "can't quick kick." I assume they are talking about Georgia. Well, everybody knows that a T-formation quarterback from the T, lining up in the quarterback position, can't quick kick; he'd kick his center in the rear if he did, because there is only one foot behind; he is only one foot behind him, but everybody in the Southeastern Conference in the business of coaching football knows that the University of Georgia did quick kick, and they quick kicked by using that second string quarterback Saye, and they would put him about six to eight yards back of the center in a double wing formation or a shotgun formation or a short punt formation or some similar formation of that type where he would take the direct snap from the center and would have room to quick kick.

If I had been coaching Alabama and Coach Butts had told me that Georgia can't quick kick, I would have thought he was setting me up for a kill, because Georgia can quick kick and has done so in 1961.

Q. If you were, as you say, coaching the University of Alabama in preparation for a game to be played with the University of Georgia, and the information contained in those notes which you have there in your hands was given

to you nine days or eight days before the football game to be played, state to the Court and Jury what assistance that would be or would not be to you in preparing your team to play the University of Georgia?

A. Well, I don't think it would be of any significance at all, because most of the technical information in these notes are basic T-formation plays. The University of Alabama, LSU, or anybody else, anybody in the United [fol. 983] States, somewhere in their offense has all of these plays.

And Georgia, for example, there is a lot of reference in here to slot right and things of that type. Georgia, in 1961, did use a slot right, and Alabama must have seen at least three or four movies, if they follow standard procedure on scouting, they saw the spring practice game of Georgia in 1962, and Georgia, in 1961, did use a slot right, and Alabama opening game of the year, would have to use slot right in the practice or they would not have been prepared to play it the first game.

So that if I had been Bryant, and my assistant coach had been scouting Georgia through movies or through the spring practice game, by August the 15th or certainly August the 25th, I think I would have known that Georgia had been in a slot right so many times, had been in a slot left so many times, that from slot right they would run a 27 play so many times from slot right, they would run a 46 play so many times. That is the type of statistical information that you really need to know in order to know the pattern that your opposing team is going to take.

Another item in this thing is a well disciplined football team; a "well disciplined ball club" is the way it reads. That is not true, because Georgia was not a well disciplined ball club, and most of your references here to personnel would be a matter of opinion.

Now, here is one. I don't know whether they go together or not, but there is a line that says "29-0 series, Babb catches everything they throw." If that term "Babb catches everything they throw" is related to 29-0 series, it would

be impossible. 29-0 series is a series which means 29 over- [fol. 984] pass. The 2 back, the halfback, that is part of the designation of the signal. The 9 means the hole, the widest hole to the right. It means the 2 back and the 9 hole is going to catch the overpass. I will coach it by going out and lining up as a flanker or they will put him in motion in the 9 hole. The 29-0 series, it would be very unlikely the end would catch the pass. It is designed to go to the man in motion or the man flanking.

Q. Then your testimony is, as I understand it, that if you were preparing to play the University of Georgia's football team, and that was given you, those notes were given you, you do not feel that you would make any use of them because they wouldn't be of any help to you?

A. No; I don't think it would be of any help to me. I would rely on my own scouting information I had gotten through statistical study.

Q. I forgot to ask you this a minute ago. Since your graduation from the University of Georgia, had you any connection with the Alumni Association?

A. Yes. I was President of the University of Georgia Alumni Society in two years and running; I think it was '51 or '52. I was President of the entire University of Georgia Alumni Society, and I am on the Board of Trustees now of the University of Georgia Foundation. I am at the present time Joint Chairman for the Georgia Side of the Joint Tech-Georgia Development Fund Drive over the State outside of the Atlanta area, and I did that job last year also, and I am repeating it this year.

Q. Since Coach Griffith became head coach at the University of Georgia, have you on occasion had the opportunity of discussing the team or the coaching staff with Coach Butts?

A. Yes, sir; I have.

[fol. 985] The Witness: Could I get a glass of water?

The Court: Sure. Bring Mr. Hartman a glass of water.

The Witness: You want me to go ahead and start answering or wait?

Mr. Schroder: You better wait.

The Witness: What was that question, now?

Mr. Schroder: Read it back.

(Whereupon the last propounded question was read aloud by the Reporter.)

A. (By the witness) Yes. Coach Butts and I, of course, have been talking about football for twenty years or more, and it is very seldom that we get together that the discussion doesn't get around to some sort of technical football discussion. Back when he resigned as head coach, whenever it was, '61, maybe, we were discussing the change in the coaching staff, and Johnny had just been made head coach at Georgia, and Coach Butts' statement to me at that time was that he thought Johnny was a conscientious young fellow who was a good organizer and who would do well in recruiting in his contacts with the Alumni, and [fol. 986] he thought the cause of his organization ability that he had a good chance of being successful. At the time I didn't agree with him, and we don't always agree on football, because I thought that he lacked—that he lacked Southeastern Conference experience, but he had mentioned to me a number of times since then that he thought that he would do a good job from the standpoint of being willing to work and having the organizational ability, and given time that he would be successful. And I always said, "I hope so." But I didn't know because the lack of coaching experience is a big factor when you get in the SEC.

Now, from time to time we have discussed the defensive and offensive plays of the football team from a professional objective standpoint. Most of the time Coach Butts would say, "Now, you can't talk about this to the man on the street because they wouldn't understand. It would have to be confidential." But we discussed the end play on the loose 6, the tackle play on the loose 6, the line backer play of the loose 6, and among other things, reference to defense, and we thought the tackle play was not good, that they were not getting across the line of scrimmage and

not making contact and were ending up in the defensive secondary lot. The linebacker in many instances was being caught on the inside on a lot of things, and it was that type of professional criticism. We do the same thing about Auburn. We do the same thing about Georgia Tech. Any good football teams in this area, when two coaches get together, you are bound to get into a professional critique, you might call it.

One of the last discussions we had was on Lotheridge at Tech, and we agreed he did a real good job when he im-[fol. 987] proved and got to running around back there, but he probably ought to get back in the pocket quicker and stand up straighter and improve his basic techniques. That is not a criticism of Lotheridge; that is just us two football coaches talking.

Q. Making an observation?

A. Yes.

Q. When Coach Butts was head coach at the University of Georgia, who was his most severe critic?

A. He was. Also my most severe critic at times from a football standpoint.

Q. Well, you have, from what you have said, gathered the impression that Coach Butts was a supporter of Coach Griffith at the University?

A. In all my conversations with him he was—he has, certainly up until recently, he has said he still thought that the boys on the coaching staff were—would hustle enough and would be organized enough to come out on top, and certainly he—he made that statement many times in the face of much opposition from a lot of people.

Q. Coach Hartman, over the years has Coach Butts or not had, shall we say, clear sailing with some member of the Board?

A. Well, anytime you are trying to build a successful team in the Southeastern Conference, it is a terrific job, and I would say that over a period of time from 1939 until 1958 or '59, '60, along in there, it's been a terrific struggle because of the dollar problem. The University of Georgia

is not a rich school from the standpoint of the gate receipts, and we have had a problem for getting enough dollars for the number of scholarships permitted by the Southeastern Conference. The Southeastern Conference permits 140 scholarships, basketball, football. At Georgia I was chair-[fol. 988] man of the Scholarship Committee from '53 through '56, and in many instances we knew when we started the season that we could sign 140 boys, that we had sufficient dollars for that, and, of course, the SEC didn't mind how many you signed as long as you didn't sign over 140, but we also had to take into consideration our dollar problem, that we would set up definite schedules that if we signed up 140 and entered them in the fall quarter, we'd have to lose ten of them by January, the winter quarter, because we would not have the dollars to pay for 140 scholarships at the winter quarter registration, and we'd have to lose another ten by the spring quarter and get down to 120, so that we had the constant problem of trying to recruit and fit our personnel inside the dollar budget, whereas many schools in the Southeastern Conference had no dollar problem and simply got the 140 boys, and that was it.

Q. Did that result in some sort of feeling of some sort between Coach Butts and some of the faculty members?

A. Well, I think definitely he had a running battle over a period of years with them on this question of—he wanted to win football games, and, of course, they wanted to stay within the budget, and it was a problem, I think, between he and Mr. Hickman and J. D., and maybe one or two other members of the Athletic Board, the problem of trying to get enough football players on the dollars that you had.

Q. Did you find that you, as an assistant coach there, were also suffering from that same situation?

A. Well, I think anybody who was coaching at Georgia realized that they were competing with the giants of the SEC; they were suffering from the limited amount of dollars available.

[fol. 989] Q. And whose responsibility was it to put a winner on the field?

A. The head coach.

Q. Coach Butts?

A. That's right.

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Cross examination.

By Mr. Cody:

Q. Mr. Hartman, I understood you to—I understood you to say that Georgia had a play which you—which you called the 029; which is the one that you referred to?

A. I testified a moment ago about 29-0, which is a play enumerated.

Q. Did Georgia have an 029 play?

A. They have a current 029 play. It is a different play altogether. 29-0 is a pass, and 029 is the—

Q. There is a difference between the two?

A. Yes.

Q. Two different plays?

A. Two different plays altogether.

Q. You mentioned a moment ago something about Coach Butts' dissatisfaction with some of the coaches procedures down there. Did you ever hear him say they didn't have anybody on the coaching staff that was SEC material?

A. Not to me; no, sir. In fact, he was very emphatic, he thought they were good enough to succeed, given time.

Q. What was the nature of the criticism that you heard him make of Coach Griffith?

A. Well, his chief criticism was about the techniques. [fol. 990] It wasn't necessarily of Johnny; it was the whole coaching staff; and I think he felt like maybe Johnny, because of inexperience on the side line, was not able to recognize what was going on.

Q. Would that include Coach Trippi?

A. Yes. At times he was critical of me while I was coaching.

Q. You have been gone from there quite a while?

A. Several years; yes sir. But in football he is a perfectionist, and many a time he has told me to get the pass defense right, and I have heard him—

Q. But, as a—

Mr. Schroder: Let him finish the answer.

A. (By the witness) I have heard him say, I don't know how many times, from a technical, professional standpoint over there that he wasn't critical of it.

Q. Don't you know, Mr. Hartman, the extent of that criticism has been such that the Alumni of the University have been generally talking about it?

A. To my own knowledge I have never heard him say any critical—

Q. How about the Alumni?

A. People have told me; yes.

Q. Did you know Coach Butts had made speeches in which he openly was caustic about this entire coaching staff?

A. I have been told that.

Q. Haven't you been to two or three meetings yourself where that subject was discussed?

A. Mr. Cody, I don't ever recall going to a meeting and hearing Coach Butts talk, in the last two years, anyway; I don't ever remember attending a meeting in which he [fol. 991] had made a speech, except the Athens Touchdown Club in Athens, and he was not critical at that time.

Q. In the travels you make over the state in connection with your work for the University, and you do some Alumni work?

A. Yes. I don't do any paid work for the University.

Q. I understand. Isn't it true that there is hardly a place that you have been in in the last two or three years where this subject was not discussed?

A. No; that is not true. Hardly a place, I have been some places where it has been discussed.

Q. Well, how many places?

A. I couldn't say.

Q. But it is—

A. I go to many places every day.

Q. But it is a good many places, though, isn't it?

A. That is the report I have been told.

Q. Now, do you have any idea, Mr. Hartman, when this so-called criticism started, can you give us any date or an estimate of it? I am not trying to pin you to any exact date.

A. I really first heard about it seriously, in any quantity, probably last fall, late in the fall.

Q. That was after he became athletic director?

A. Yes, sir; about eighteen months after he became athletic director.

Q. In Mr. Barwick's office when you met there with these representatives of the University, is this a statement that was subsequently made by you concerning that meeting: "My comment after reading the notes—"

Mr. Schroder: Where are you reading from, please, sir? [fol. 992] Mr. Cody: On Page 42.

Mr. Schroder: Thank you. Just a moment; let me catch up with you.

By Mr. Cody:

Q. "My comment after reading the notes was that I didn't see how a man could overhear this in a telephone conversation, not being familiar with football terminology, and be able to write such specifics down there."

A. I made that.

Q. Then by that you mean that these notes do not contain some reference to specifics?

A. They contain reference to specifics in all T-formation football that is played in the United States.

Q. Mr. Hartman, from your experience in football, haven't you found that the important—one of the important things about an opposing team is when they play to use a particular play or formation, not what the formation is but when they intend to use it; isn't that true?

A. Well, I would think prior to a ball game I would be more interested in their pattern which is established by review of movies and things of that nature; in other words, if Joe Doaks came to me and said, "Georgia Tech is going to shift on you in the first ball game," that would be interesting, but I do know that Georgia Tech's basic bread-and-butter plays are the sweep, the quick pass to the end, and four or five other things that I ascertained statistically.

Q. Isn't it true, Mr. Hartman, in modern football there [fol. 993] are only about eight or nine formations in all; isn't that true?

A. Are you sub-dividing the T-formations into the various slots, flankers and flies?

Q. That would be a various of each formation, but basically there are only about eight or nine formations.

A. As practiced in American football, there is not but one now, to any degree, and that is the—Tennessee is different—it is a single wing back. UCLA—

Q. I mean, formations used by different teams, basically, there are only about eight or nine?

A. I have never really counted up the number in the T-formation. If you are subdividing the T-formation, is that what you are doing?

Q. I can't testify. I am asking you. I can't help you on that.

A. Well, ask your question again.

Q. I am asking you if in modern football that there are only about eight or nine basic formations?

A. I would say there are not but about three.

Q. Now, when you—when you are training a team for the first game of the season, would it be helpful to an opponent to know what they were training for, which formations they were training for?

A. Well, if they had specific information on that it might be, although they would probably already know, because I would have to train them for the first game, the same stuff I used in the spring practice game. I can't teach them in two weeks—

Q. You wouldn't be able to teach a young team, by the first game of the season, all the formations that you intended to use during the entire season; is that a fair statement?

A. Now, you and I have got a different conception of [fol. 994] "formations." I would say that the T-formation is one formation, and that in spring practice you would install your basic task series your going to use, your basic slot series you are going to use, your basic trap series you are going to use, and your basic sweep series you are going to use, and your basic passes, so that the stuff you used in your spring game would be the stuff you'd have to use in the first game, especially when it was that close, that early.

Q. Now, Mr. Hartman, when Mr. Schroder went over with you the nature of the notes—

A. Uh huh.

Q. —which you have in your hand there, or a photostatic copy, sort of a blown up copy of them, did he go over in detail with you the testimony of Mr. Burnett which enlarges on the information in those notes?

A. I don't believe I have ever discussed with Mr. Schroder anything about the notes.

Q. Well, have you discussed it with anybody in his office?

A. I don't recall seeing any blown up things. I saw these, and I saw the photostatic copies.

Q. Who have you discussed these notes with?

A. With Mr. Bondurant, primarily.

Q. How about Mr. Schroder's office; who, in that office, have you talked to?

A. I think I talked with Mr. Smith and Mr.—

Q. Lockerman?

A. —Lockerman about several months ago but not in much detail.

Q. Did they show you the deposition that had been given by Mr. Burnett?

A. No.

Q. What was this you said a moment ago about the

[fol. 995] statements made by Coach Butts that were confidential? Will you repeat that? I didn't—

A. I said that in our many discussions about football, we discussed a lot of teams, and when he was talking about Georgia in recent months, he always said, "Now, of course, I couldn't go out and say this to the man on the street because they wouldn't—they don't know what we are talking about. They wouldn't realize the implications of this thing, and I would be severely criticized." That was his implication, that if he went out and told that to the man on the street—

Q. Do you—

A. It is a very technical discussion. You can't—all you have got, you look at a football team playing, you come back subconsciously with definite implications to you what that football team does well, and, naturally whether it be Georgia or Auburn, or whoever it may be. And I remarked to him on many times the way to beat Georgia was to run wide; run off into the flat. Nothing traitorous about that. I have spent a lot of time out there on the field for Georgia, but that is just a true thing. I think I told Dr. Aderhold that last fall. It is just a sad situation that is brought about by many things, but that is the type of criticism.

Q. When you were talking about that criticism you were discussing—you were discussing his resignation in the early part of 1961, were you not?

A. Coach Butts' resignation?

Q. Yes.

A. No. We were talking mainly about the '61 football season, during the course of the 1961 football season and during the course of the 1962 football season as they were played. You couldn't criticize in '61 the problems of the [fol. 996] football season of '61; it hasn't been played.

Q. Let me ask you this question, then. Do you recall when your deposition was given before a Court Reporter on June the 11th—

Mr. Schroder: Page, please.

Mr. Cody: On Page 29.

By Mr. Cody:

Q. —that this question was asked you, and I want to ask you if you gave this answer. "Did he indicate to you"—meaning Coach Butts—"any bitterness over his resignation or resentment about it?" And you gave this answer: "Well, I think he indicated that insofar as the four people that we have been discussing, that he felt like that they were pretty less than loyal to try to use those tactics to get him out." Was that your answer to that question?

Mr. Schroder: I don't remember the witness having testified to anything contrary to that today.

The Court: Wait just a moment; what is that, Mr. Schroder?

Mr. Schroder: I said I do not remember the witness having given any testimony in that area today. I don't know the purpose of reading the deposition to him. Ordinarily [fol. 997] it is to discredit the witness or prove contradictory statements previously made by him.

The Court: I think he had him on cross-examination, Mr. Schroder. I think he can go into statements he made previously concerning his termination as athletic director. I will let him answer.

The Witness: Mr. Cody, that is a true statement, but it didn't involve any members of the coaching staff or the university. They were four outside individuals.

Mr. Cody: I see.

By Mr. Cody:

Q. Coach Hartman, did you testify that while you were coach on Coach Butts staff at Georgia that you had a play described as the 29-0 series?

A. 29-0 was an abbreviation. It is 29 over; that is the 29-0 referred to here.

Q. Did you know that that name or description of that play is not being used by the present Georgia coaching staff, that is, was not used in 1962?

A. Are you asking me whether I knew that 29 over was used in 1962?

Q. Right.

A. I don't know. I don't recall seeing it, because it involves a man in motion; or it recalls a man stationed wide as a flanker where the quarterback—where the quarterback gets behind the center, takes the ball like that and [fol. 998] throws to a flanking back who is out about twelve yards or to a man in motion.

Q. Did you know that none of the coaches, present Georgia coaches who have testified in this case have recognized this description, but that now you recognize it as a play used by Coach Butts while he was the head coach at Georgia; is that your statement?

A. No; I didn't know that. All I know is what 29-0 means to me.

Q. I want to ask you this question now, Mr. Hartman. At this meeting that you attended in Mr. Barwick's office, did Mr. Barwick have with him at that time an affidavit signed by Mr. Burnett?

A. I would say if he did I don't remember seeing it.

Q. Do you know whether or not he acquainted those present at that meeting with the substance of that affidavit?

A. I believe he did, without revealing the name, but I don't think he ever showed it at that meeting.

Q. Will you state to the Court whether or not Coach Butts ever denied at that meeting that the conversation referred to in that affidavit did not take place?

A. The only thing I remember him saying about that at all was the fact that he had made many telephone calls to Bryant, and that if a person overheard a telephone conversation that he had made, that it could—he could have misconstrued some reference to football terminology. The only thing that he denied was that he had ever done anything to hurt Georgia, and he repeated that several times.

Mr. Cody: I believe that's all.

[fol. 999]

Redirect examination.

By Mr. Schroder:

Q. He didn't deny that; he asserted it, did he not?

A. He asserted it.

Q. When Mr. Bondurant of Mr. Cody's office was over there discussing those notes with you, did he show you Mr. Burnett's deposition?

A. No. I don't recall ever seeing Burnett's deposition.

Q. Did you—the first time you saw those notes was sometime in January, 19—let me return those to the Court Reporter before we get them all soiled. The first time you saw these were in January, 1963?

A. Wednesday, February the 13th.

Q. You don't know when they were made?

A. Have no idea.

Q. Don't know who made them?

A. Nothing other than what they told me.

Q. Who said that, Burnett, the man who said he made them?

A. Who?

Q. Burnett?

A. I believe Burnett, when he came before us in a meeting that we had, did say he made the notes.

Q. That is all you know about it?

A. That is all I know about it.

Q. When Wallace Butts resigned as head coach, did he not recommend Johnny Griffith as the head coach?

A. That was my opinion.

Mr. Cody: That is not in rebuttal of anything, Your Honor.

[fol. 1000] Mr. Schroder: Rebuttal? I am putting up my case.

The Court: I think it is admissible. I will let him testify to it. I overrule the objection.

The Witness: I might qualify that. Dr. Aderhold told me that.

By Mr. Schroder:

Q. Dr. Aderhold told you Coach Butts had recommended Coach Griffith as the head coach to succeed him?

A. (witness nods affirmatively).

Q. Answer so the Court Reporter can get it down. Just say "yes".

A. Yes, yes.

WILLIAM C. HARTMAN having resumed the stand, testified further as follows:

By Mr. Cody:

Q. Mr. Hartman, you understand you are still under oath in this case as a witness?

A. Yes, sir; I do.

Q. Do you recall that following the 1960 football season that you had a conference—

A. Yes, sir; I recall.

Q. —with Mr. John Bailey, Mr. Hicks Mizell, Mr. Dan Whitmire, and Mr. Dan Spain?

Q. I don't believe it was following the 1960 football season; I think it was in late November of the 1960 football season.

Q. Was that conference in Atlanta?

A. Yes, sir.

Q. Where was it?

A. Capitol City Club.

Q. Was Mr. Harold Walker there?

A. I think he was; I am not sure.

The Court: Who are those parties you mentioned? I know Mr. Harold Walker. How about the other parties?

By Mr. Cody:

Q. Would you describe who they are?

A. You want me to name them?

Q. Who is Mr. John Bailey?

A. Mr. John Bailey is a boy—a graduate of the University of Georgia. I believe he is a native of Georgia who is in the insurance business now.

Q. Went to the University of Georgia?

A. Yes, sir.

Q. Was Mr. Dan Whitmire one of the recruiters for Georgia?

A. I would think you would class him as one of the alumni recruiters; yes, sir.

Q. By "recruiter" you mean one of the young men that contacted prospective players?

A. Right. He'd go out and—

Q. Undertake—

A. He was not an official representative, of course, like the University, but like many of the supporters of the University of Georgia he would try to influence boys to come.

Q. More or less a voluntary assignment?

[fol. 1002] A. Right.

Q. Inducing young men to come to the University of Georgia that were athletes?

A. I wouldn't say "induced them"; try to get them to come to Georgia.

Q. And Mr. Hicks Mizell, who was he?

A. I didn't know Hicks too well until that meeting. Hicks, I believe, is a manufacturer's representative here in Atlanta, and I assume that he is a graduate of the University of Georgia.

Q. Well; what did you discuss at that meeting with—

Mr. Schroder: Your Honor, that is out of the presence of the plaintiff.

The Court: Yes, sir. I am not going—

Mr. Schroder: You said, what did he discuss.

The Court: I think he can ask what was discussed. That would be hearsay.

By Mr. Cody:

Q. Did—did the subject matter of Mr. Butts come up?

A. Yes, sir.

Mr. Schroder: Same objection.

[fol. 1003] The Court: I think that would be hearsay, Mr. Cody.

By Mr. Cody:

Q. Now, after that meeting did you have a conference with Coach Butts?

A. I went back and talked to him.

Q. Did you tell him what transpired at that meeting?

A. I did.

Mr. Cody: I think now, Your Honor—

The Court: That is not hearsay; that is in his presence.

By Mr. Cody:

Q. Will you tell the Court what transpired in that conversation with Coach Butts?

A. With Coach Butts?

Q. Yes.

A. I told him that these boys, young boys in Atlanta were extremely upset over the recruiting in this section, in the Atlanta area particularly, and they felt like that with him as the coach at the University of Georgia they could not do a good recruiting job.

Q. Why?

A. Because of their—what they told me—

Mr. Lockerman: Your Honor please, unless he went into that with Coach Butts, it would not be admissible.

[fol. 1004] The Court: I assume he went into this with Coach Butts. I understand this is a conversation between Mr. Hartman and Coach Butts; is that correct, Mr. Hartman?

The Witness: Yes, sir.

The Court: I overrule the objection.

By Mr. Cody:

Q. Tell us what that was.

A. They objected to his activities in what was referred to as the Night League.

Q. The Night League?

A. Yes, sir.

Q. What did you understand it to be?

A. I understand it—I understood it to be—

Mr. Schroder: I don't think it is important what this witness understood it to be but what Coach Butts might have thought it would be. What this witness understood somebody else to say and put his interpretation on it—

The Court: Yes, sir; I sustain the objection to that, but I will let him continue the conversation with Coach Butts.

Mr. Schroder: Yes, sir.

[fol. 1005]

By Mr. Cody:

Q. Tell us the entire conversation you had with him.

A. Well, let's see; that was quite a while ago. In substance, it was mainly that these four boys—there was another gentleman there too, Frank Spain who was not a graduate of the University of Georgia, that these four boys objected to him as a head coach at the University of Georgia.

Q. Do you mean to tell the Court now that that is the full conversation you had with Coach Butts?

A. That is the sum and substance of it; yes, sir.

Q. Would you like to refresh your recollection by referring to the deposition which you gave several months ago?

A. Yes.

Mr. Cody: May I see his deposition?

Mr. Schroder: If the Court please, may I inquire as to the relevancy of this?

The Court: I believe Coach Butts testified under direct-examination, or he stated that he resigned in 1961 because of high blood pressure—

Mr. Schroder: Yes, sir.

The Court: —in the last two games.

[fol. 1006] Mr. Schroder: Yes, sir.

The Court: And I think it is relevant for the defendant to show, if he can, or if he cannot, that that was not a true statement. I presume that is what it is for.

Mr. Schroder: Is that what this is directed towards proving, that that was an untrue statement?

Mr. Cody: Right.

The Witness: You don't have this indexed, do you?

Mr. Cody: I will give you the page number.

By Mr. Cody:

Q. First look at Page 8, Mr. Hartman. Do you—can you now state whether or not Mr. Arthur Montgomery was the other gentleman you mentioned who did not attend the University of Georgia?

A. No, sir; I didn't say Mr. Arthur Montgomery didn't attend the University of Georgia. I said Mr. Frank Spain did not.

Q. Was Mr. Montgomery at this meeting?

A. Yes, sir; Mr. Montgomery was at the meeting.

Q. Now, first—the first reason that you gave which I believe, if you refer to Page 8, see if that refreshes your recollection.

A. Yes; I stated—I stated here, I imagine, it did say it [fol. 1007] was on account of Coach Butts' activities in the Night League in Atlanta. "What do you understand by activities in the Night League to mean? I would assume that would mean appearances in various nightclubs in Atlanta."

Q. Did you have any—did the conversation with Coach Butts include any discussion about who he was with at these nightclubs?

A. No.

Q. Did it include the subject matter of his—of his conduct at these nightclubs?

A. He never has discussed that with me.

Q. Was that any part of this conversation that you had with Coach Butts?

A. Mine with Coach Butts, no.

The Court: As I understand it, Mr. Hartman, or am I incorrect, Mr. Arthur Montgomery is a Georgia alumni?

The Witness: Yes, sir. Mr. Arthur Montgomery is a Georgia alumnus, and he is very active in alumni work.

By Mr. Cody:

Q. Look at Page 21, Mr. Hartman, and see if that refreshes your recollection to the extent of correcting any statement that you have just made. I want to know now if you informed Coach Butts of anything else which is the subject matter of this complaint by these Atlanta alumni.

A. I presume you have reference to this question: "Did you inform him of these rumors which are being referred to by this Atlanta group?" And I said, "Yes, sir, I did. [fel.1008] What did you tell him the rumors were? The same as we have already discussed here, that these boys seemed to think that he was making appearances in public places over there, such as nightspots and so forth, with groups, girls, and so forth. Did you indicate to him there was any implication of an immoral relationship with any of the girls with whom he appeared in these nightspots?" And then there was some—my answer was: "Other than association I didn't tell him, I believe. I don't believe I had any specific immoral situations called to my attention in that connection other than just association."

Q. Now, in relating the substance of this conversation, Mr. Hartman, was there any other subject which you communicated to Coach Butts at that time other than what you have related?

A. No; nothing other than what I have related.

Mr. Cody: I believe that's all.

Redirect examination.

By Mr. Schroder:

Q. Mr. Hartman, Coach Butts did discuss with you about the plans he had to resign as head coach because of the last two games, that he had a condition on the side?

A. Coach Butts told me that it had been an uphill fight all the way, and with his high blood pressure and the flood of the heat he had had on the sidelines he didn't think the flutter he had was worth it.

The Court: The flutter he had?

[fol. 1009] The Witness: Yes, sir.

By Mr. Schroder:

Q. The four individuals you named that made, what you indicated a moment ago, complaints, did not include Arthur Montgomery?

A. They did not include Mr. Montgomery.

The Court: How did Mr. Montgomery—I am not sure; how did Mr. Montgomery get in?

Mr. Schroder: He was just at a meeting, that he and Mr. Hartman attended a meeting at these boys' request.

The Witness: Mr. Montgomery was vice-chairman of the Georgia Student Education Fund at the time, and I am the chairman, and in coming to Atlanta I contacted Mr. Montgomery and asked him to be with me.

Mr. Schroder: Just a moment, please.

Mr. Cody: I have a couple of other questions, Mr. Hartman, I want to ask you.

Recross examination.

By Mr. Cody:

Q. After you had this conference with the Atlanta alumni that you mentioned, did you then tell Coach Butts [fol. 1010] that if he didn't resign they were going to the Athletic Board about this subject.

A. I told him it was my opinion there was a probability of him going to the Athletic Board.

Q. Didn't they tell you that?

A. In the first part of the conversation, but in the latter stages of the conversation he indicated a weakening of that desire.

Q. You had something to back up your opinion, factual matter?

A. It was my opinion they might go to the Athletic Board.

Q. Let me ask you this question, Mr. Hartman. You, I believe, have already testified, and I want to go along with you one hundred per cent, but you are one of the prominent alumni of the University?

A. No, sir; I have not testified that I was a prominent alumnus of the University. I am an alumnus of the University of Georgia.

Q. I will concede to that. What—what is your opinion, if these factual matters that you have mentioned were true, what is your opinion with respect to whether or not it would hurt the University?

A. Insofar as my personal knowledge is concerned of these matters, I know of no situation that would hurt the University.

Q. Let's assume, for the sake of argument, that they are true; would they or not, in your opinion, hurt the University?

A. Well, I think you are asking me to make an assumption I never have made. I don't see any reason for me to make such an assumption.

The Court: I think Mr. Hartman can testify as an expert [fol. 1011] on football, but I don't think he can testify as an expert on assumption of hypothetical facts such as that.

By Mr. Cody:

Q. Can you pinpoint the dates of this conference you had with Coach Butts?

A. With Coach Butts?

Q. Yes.

A. In my opinion, it was after the Georgia-Auburn game of that year which would mean we have an off week there before the Tech game, so it must have been approximately the third week in November of that year.

Q. When did he resign?

A. I believe his resignation was announced the last week in December or the first week in January.

Mr. Cody: I see. That's all.

The Court: Do you have any further questions?

Redirect examination.

By Mr. Schroder:

Q. These four boys or any four of the boys indicate they were representing any group other than just themselves?

A. No; I don't recall them—I had known these boys fairly well, with the exception, maybe, of Mizell, and they did not indicate, I don't believe, at the time that they were speaking for anyone other than themselves.

[fol. 1012] Recross examination.

By Mr. Cody:

Q. Did you—did you acquaint any members of the Athletic Board with this situation?

The Court: I believe that would be hearsay.

Mr. Lockerman: That would be hearsay, Your Honor.

Mr. Cody: Not what he did, Your Honor, what they did.

The Court: I will let him testify if he acquainted them, not what he said.

The Witness: I am not certain, but it is possible that I told Cook Barwick.

Mr. Cody: I believe that's all.

Mr. Schroder: I have no further questions.

Examination.

By the Court:

Q. Are you on the Athletic Board, Mr. Hartman?

A. No, sir; I am not.

Q. Who makes up the Athletic Board?

[fol. 1013] A. You want the composition of it?

Q. I don't care about the individuals; in various categories or what.

A. To the best of my knowledge there are eight faculty members. I forgot whether that includes the President of the University; he is on the Athletic Board and chairman. Whether that eight includes him in the figure, I don't remember. And there are seven non-faculty members on the Athletic Board, two of whom are selected each year by the Alumni Society of the University of Georgia.

Q. In other words, the faculty members could control the Athletic Board if they saw fit?

A. If everybody block-voted, I guess you could say the faculty could control it.

CHARLES DAVIS THOMAS called as a witness on behalf of the plaintiff, after having first been duly sworn, testified by deposition as follows:

Cross examination.

By Mr. Schroder:

Q. You have told the reporter your name is Charles Davis Thomas?

A. Yes.

Q. Where do you reside?

A. 135 Central Park West.

Q. What is your present occupation?

A. I am managing editor of the Saturday Evening Post.

Q. As such, what are your responsibilities?

[fol. 1014] A. Well, under the—I edit the magazine under Clay Blair, Jr. I am the second editor, second managing editor of the Post.

Mr. Smith: Next page, line 20.

By Mr. Schroder:

Q. How old are you?

A. 34.

Q. How long have you been employed by Curtis or the Post?

A. I have been employed by Curtis since of February of 1961.

Mr. Smith: Go to Page 34, line 18.

By Mr. Schroder:

Q. Let me point out to you the statement in this story which says, and I read from Page 83, at the bottom of the second column:

“But careers will be ruined, that is sure.” So that you knew what was involved in this story before it was published? You knew that the careers of two men would be ruined as a result of the publication of the story, didn’t you?

A. Yes.

Q. And you would make certain that every source available to you, or every source that might be made available to you, was thoroughly investigated to the nth degree before you would let such a publication as this go before your 18 million readers?

A. Perhaps I might clarify things if I said “every significant source.”

[fol. 1015] Q. Or 23 million. Let the record show 23 instead of 18. Is that right? How many readers do you have?

A. We claim 23 million. That is what our circulation people tell us.

Q. The standard of conduct followed by the journalism profession certainly would demand that the most particularity of care be exercised before it would publish any article which it knew in advance would ruin the career of a man or careers of two men?

A. Yes, and that is the policy we pursued in this case.

Q. Now, when the affidavit which Mr. Graham took from Mr. Burnett was brought back here by Mr. Graham and read to you and to Mr. Kahn, you knew then that a Mr. John Carmichael had been present and discussed these notes with Mr. Burnett on the very day that he says that he wrote the notes and heard the conversation, and you knew that then, didn't you?

A. If this is in the affidavit, yes. If not, subsequently hereafter.

Mr. Smith: Page 39, line 19.

By Mr. Schroder:

Q. The affidavit, you said you attached a great deal of significance to the affidavit, which you said supported your belief that he was telling the truth?

A. Yes, sir; he swore to it.

Mr. Smith: Next page.

[fol. 1016] By Mr. Schroder:

Q. At that time, of course, you were familiar with the fact that he had been arrested and convicted of passing bad checks. You know what a bad check is?

A. Yes, sir.

Q. What are you representing to the person that you are writing that check to when you give him the check?

A. That you have funds to cover the draft.

Q. Well, is that a lie when you don't have the funds?

A. Excuse me?

Q. Is it a lie when you represent to the man that you have the funds and you don't have them?

A. Yes.

Q. And that didn't affect your belief in the credibility of one George Burnett just because he swore to you that this was true?

A. It was a matter that we took into consideration.

Q. Did you take it into consideration to the extent that you made any further investigation as to how many other bad checks he had written?

A. We were aware that there were possibly others at the time, yes.

Mr. Smith: Page 60, line 17.

By Mr. Schroder:

Q. You deliberately didn't interview him?

A. Not deliberately. We didn't see any point to it. He told Burnett—

Q. You made up your mind not to interview him, didn't you?

A. Yes.

[fol. 1017] Q. When you, as a responsible journalist, have under consideration the publication of an article which you know will ruin the professional careers of two men, you feel the necessity of relying on more than just plain hearsay evidence, don't you? You want to go and get the real facts, don't you?

A. Well, I expect my writer to.

Q. I mean the Post. I don't mean you individually.

A. All right, all right.

Q. The Post?

A. Yes, sir.

Mr. Smith: Page 62, line 24, bottom of the page.

By Mr. Schroder:

Q. Now, there were other items which occurred to your sports editor yesterday as being highly important to be checked out before this story was published. One was the

notes Burnett said he took at the time he overheard that telephone conversation. Do you agree with that?

A. Yes.

Q. Did you ever see those notes?

A. I have, yes.

Q. When?

A. After publication of the article.

Q. You went on and published it even though you didn't have that source of information available to you, which you thought was so important you went ahead and published the article without getting that information—

A. We knew the notes existed.

[fol. 1018] Q. But that is not—you wanted to see the notes before you published the article?

A. We would have liked to see the notes, yes.

Mr. Smith: Page 65, line 4.

By Mr. Schroder:

Q. Another item which Mr. Kahn—now, whether you agree with him or not, you let me know—told Mr. Bisher he thought the statement from the Alabama football players ought to be obtained.

A. Yes.

Q. But that was never obtained or those were never obtained, were they?

A. It was my understanding that Mr. Bisher was unable to come up with a player that he thought would add anything to the research on the story.

Mr. Smith: Page 66, top of the page.

By Mr. Schroder:

Q. In other words, what you are saying is this: had Alabama football players been interviewed and said, "No, we saw no difference in the way we were prepared for this game than the way we had planned for it in spring practice," you would not have put that in the article?

A. We might have.

Q. The chances are that you would not?

A. No, I would not say that.

Q. You might not?

A. I said we might have put it in the article.

[fol. 1019] Q. Might have?

A. Yes.

Mr. Smith: Page 68, line 20.

By Mr. Schroder:

Q. But don't you know that if your reputation and your character were at stake and about to be ruined, don't you think that you would like to have the full story presented to whoever was going to judge this thing?

A. It depends on what you mean by the full story.

Q. Carmichael's story.

A. The full story—perhaps we should have gone further into Wally Butts' financial connections, and his personal life, and we didn't. That is part of the story, too, but we didn't print that. There wasn't room. It wasn't germane.

Q. What is the objection, as a responsible journalist, to writing the pros and the cons of a story, particularly when a career is involved? As a responsible journalist.

A. There is no objection. One has to narrow—you have to narrow the field somehow to get an article written. Otherwise, you could spend five years writing the article.

Mr. Smith: Page 71, line 23.

By Mr. Schroder:

Q. Now, you have gone to some length in explaining your reliance upon what Coach Johnny Griffith had to say. Now, don't you know that he has denied having said three direct [fol. 1020] quotes from him in this article?

A. I am aware of that.

Q. Did you submit this article to him to check out his quotes before you published it?

A. No, it is not our practice to submit articles to people who are involved in the article for their approval.

Q. You think—

A. This is true in journalism. You rely on your reporters.

Q. Do you think it is fair to the man who is being quoted or to your 23 million readers to put what you would term as important quotations from that man, when not accurate?

A. At the time we publish them we believe they are accurate.

Q. Have you taken any steps to inform your 23 million readers that they were inaccurate quotations?

A. I am not convinced that they are inaccurate.

Q. Even though the man you are relying on says they are inaccurate?

A. It may be a question of the context, and I am not sufficiently familiar with the detailed sources of those quotes to be able to say one way or the other. I am not questioning Coach Griffith's veracity.

Q. Let me put it to you this way: You thought enough of the quotes from Coach Griffith to put them in your article, in order to, as you say, ruin the career of two men. You thought enough of them to put them in there, didn't you?

A. That is correct.

Q. And you relied upon them?

A. Yes.

[fol. 1021] Q. And your 23 million readers read what you were relying upon?

A. That's right.

Q. If has now come to your attention that he has denied making three of those quotations. What corrective steps have you taken in order to clarify the atmosphere with your 23 million readers?

A. We have taken none.

Q. There is another—

A. Had Coach Griffith wanted to write us a letter pointing this out, we would have been happy to publish it in the "Letters" column of the magazine.

Mr. Smith: Turn to the next page, line 9.

Mr. Joiner: What page, please, sir?

Mr. Smith: Next page.

By Mr. Schroder:

Q. Furthermore, the careers have already been ruined, at least the one of Wallace Butts.

Now, you rely again—and you checked this article before it was published? You read it very carefully because it was such an important, shocking, significant story?

A. Are you talking about the article or the editorial?

Q. Yes, the article.

A. Yes.

Q. I am now quoting from the left column on Page 81, which is the first column in the story. This is a quote from [fol. 1022] Burnett, directly, you were quoting from Burnett:

“Butts also said that Rakestraw (Georgia quarterback Larry Rakestraw) tipped off what he was going to do by the way he held his feet. If one foot was behind the other it meant he would drop back to pass. If they were together it meant he was setting himself to spin and hand off.”

That would be, in your opinion, a right vital bit of information for the defensive football team to know about the offensive quarterback of the other team?

A. Yes.

Q. And that is why you put it in the article?

A. Yes.

Q. Did you know that George Burnett has now said that Butts didn't say that to Bryant?

A. I understand that is true, yes, but—

Q. Have you done anything in connection with correcting that bit of misinformation that you were giving your 23 million readers?

A. No, we have not.

Mr. Smith: Page 83, line 9.

By Mr. Schroder:

Q. Do you intend to imply anywhere in this article that there was any betting on this game indirectly or directly by the principals involved?

A. No.

Mr. Smith: Page 92, line 17—18, rather.

[fol. 1023]

By Mr. Schroder:

Q. Are you familiar with the fact that I, as Coach Butts' attorney, wired the Curtis Publishing Company on March 11, 1963, requesting that the article which I had learned through the grapevine was to be published, that it not be published, and in that telegram I wired as follows:

"As Coach Butts' attorney I am informing you here and now of the falsity of the charges contained in the proposed article and to respectfully request that you in the interests of fair and accurate reporting refrain from publishing or otherwise releasing said article so as to avoid totally unnecessary damage to my client. Letter follows."

A. Yes, I saw a copy of that telegram.

Q. Why was it never answered?

A. I referred it to counsel.

Q. It was never answered, was it?

A. I don't know that. I didn't answer it.

Q. I also on that same date wrote a registered letter, return receipt requested, again calling to your attention the absolute falsity of the article and pointing out to the Post the damage or destruction that it would do to my client's reputation and again requesting that it not be published. Did you know that such a letter had been written?

A. Yes.

Q. That also was not answered?

A. I don't know. I didn't answer it.

Q. The article in the issue of March 23, 1963, did come out, as it had been printed?

A. Yes.

Mr. Smith: Page 101, line 21.

[fol. 1024] By Mr. Schroder:

Q. You referred to a portion of the article a moment ago that was changed because you wanted some editorial information from Burnett about the "ordeal" he said he was going through. Did you ever consider it somewhat suspicious that he sat on this matter for almost four months without going to the law about it or without going to the coach of the Georgia football team about it or without going to anybody about it?

A. I thought it a matter of interest, which is why I asked that a fuller explanation—a fuller explanation of why he didn't, be written into the article.

Q. Don't you think if one had done what he claims he did and was interested in football, that he would have done something about it before the game was played, had he actually thought it was to be a rig or a fix?

A. I can't speak for Mr. Burnett. I think—

Q. You would have done it, would you not?

A. Yes, I would have, but I don't expect everyone to behave in the way that I do.

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ROBERT HENRY EDWARDS, called as a witness on behalf of the plaintiff, after having first been duly sworn, testified by deposition as follows:

Direct examination.

By Mr. Schroder:

Q. Give me the circumstances now as to what took place [fol. 1025] and what was said when you saw him on January 5th?

Mr. Schroder: "Him" being Burnett.

A. He brought notes in and I looked at them.

Mr. Schroder: Your Honor, I now want to read another portion of Mr. Edwards' deposition, Page 66.

By Mr. Schroder:

Q. When is the next time that you had any connection at all with the Butts-Bryant story?

A. The next time was, I got down to Dublin and I stopped in Dublin to get a cup of coffee and I placed a call to Johnny at that time and reached him and he was getting ready to go out to the West Coast to a football clinic or coaches' conference or something.

Q. That was on January 5th?

A. Yes, sir.

Q. Had you called him at any time before that on January 5th?

A. No, sir; no, sir.

* * * * *

FURMAN BISHER, called as a witness on behalf of the plaintiff, after having first been duly sworn, testified by deposition as follows:

Direct examination.

Q. Was any conversation had at that meeting pertaining to reviewing movies of the game?

[fol. 1026] A. To my knowledge, no. There might have been, and if it did it didn't figure importantly in any of our discussions. I would have said that it would have been a very good idea, though.

Mr. Schroder: One further question.

By Mr. Schroder:

Q. Did Mr. Graham or any representative of the Post ask you to check with Alabama players in your investigation?

A. No.

Mr. Schroder: Now, if the Court please, it will be remembered that during the depositions yesterday references were made to what Mr. Bisher had informed the writer of the story. I want to read a few sections from Mr. Bisher's deposition relating to those topics which the writer says Mr. Bisher had furnished him.

The Court: You adopting Mr. Bisher as your witness?

Mr. Schroder: I am adopting him as my witness for this purpose; yes, sir.

The Court: If you adopt him as a witness, he is a witness for all purposes.

Mr. Schroder: All right, sir, I have no objection at all to that.

[fol. 1027] The Court: All right, sir.

Mr. Schroder: Because they—well, I will argue that to the jury.

The Court: The point I was making, he was not under the Federal Rule an adverse witness.

Mr. Schroder: That's right, sir. Could I see board No. 2, just a minute, please. Question to Mr. Bisher—

By Mr. Schroder:

Q. Returning to the article in the Post of March 23, 1963, I am going to read to you, Mr. Bisher, from Page 81 of that article, and I will bring it over there where you can check my reading, and I will read a section from the second column of Page 81 which is headed, "Putting the Pieces Together", and it reads, "In the next few hours Burnett tried to piece together what he knew of Georgia football. Butts, a native of Milledgeville, Georgia, had joined the University coaching staff as an assistant in 1938. A year later he was named head coach. For 20 years he was one of the most popular and successful coaches in the South. Then prominent University of Georgia alumni abruptly soured on him, and on January 6, 1961, he was replaced by a young assistant coach named Johnny Griffith. Butts, filed away in the position of Georgia's athletic director (which he had

held along with his coaching job for some years), was outspokenly bitter about his removal from the field." Did [fol. 1028] you inform that information to the author of the article?

A. No.

Q. Did you furnish to the author of the article, Mr. Bisher, any part of that section which I have just read?

A. No, I did not.

Mr. Schroder: On Page 55, reading from Mr. Bisher's deposition—

By Mr. Schroder:

Q. Did you at any time in conversation with any representatives of the Saturday Evening Post, including Frank Graham, Jr., discuss the figure \$70,000 that is referred to in that section of the article that Butts is supposed to have lost?

A. To my knowledge, no.

Q. Now, did you pass that on to Frank Graham?

A. I said I did not.

Mr. Schroder: The next one, Your Honor, is on page 57.

Mr. Smith: Is that another column?

Mr. Schroder: That is Page 82, column 2, board 5. It begins at 56.

By Mr. Schroder:

Q. Reading again from the second column on Page 82 of the Post issue: "Griffith had since spoken of his feelings when he had finished reading Burnett's notes and Burnett [fol. 1029] and Edwards had left. 'I don't think I moved for an hour—thinking what I should do. Then I realized I didn't have any choice.'" The quotes and internal quotes that I just read were given by you to Frank Graham?

A. The prior sentence I had nothing to do with. I did not furnish the prior sentence, reading this way: "Griffith has since spoken of his feelings when he had finished reading Burnett's notes, and Burnett and Edwards had left."

Q. You did not furnish that?

A. No, I did not.

Mr. Schroder: Your Honor understands I will connect these up with Mr. Graham's deposition when I address the jury.

By Mr. Schroder:

Q. This is one on Page 83 of the article which has already been referred to, "one of the wildest ones—"

The Court: You still reading from Mr. Bisher's deposition?

Mr. Schroder: Yes, sir.

By Mr. Schroder:

Q. I refer specifically to Page 83. It says, "One of the wildest was that Butts was mysteriously and suddenly ill and had entered the State Hospital at Athens. This was quickly scotched when Georgia University officials maintained that Butts merely went for the physical checkup required for his pension records. Shortly afterward he was [fol. 1030] seen in Atlanta at a Georgia Tech basketball game." Did you furnish any of that information to Mr. Graham or the Saturday Evening Post?

A. No, I don't know where they got that.

The Court: All right, sir, anything further from Mr. Bisher's testimony?

Mr. Schroder: I am checking, Your Honor. One final question from Mr. Bisher.

By Mr. Schroder:

Q. Did you give information to the Saturday Evening Post that motion pictures of other games were being scrutinized?

A. No.

• • • • • • •

JOHN C. CARMICHAEL having resumed the stand, testified further as follows:

Recross examination.

By Mr. Cody:

Q. Mr. Carmichael, you understand you are still under oath in this case as a witness?

A. Yes, sir.

Q. And under cross-examination?

A. Yes, sir.

Q. Do you recall that on three different occasions you [fol. 1031] have testified with reference to these particular notes?

A. I don't know about three occasions, but I have testified; I don't know how many occasions.

Mr. Cody: Let me have the notes, if you have got them, please.

The Clerk: All right, sir.

Mr. Cody: Just leave them right there for a minute. I will straighten them out.

By Mr. Cody:

Q. Do you remember appearing in Mr. James Therrill's office on March the 21st, 1963, to give some testimony in relation to this matter?

A. I don't remember the exact date, but I appeared in his office; yes, sir.

Q. That was over at the State Office Building?

A. That's correct, sir.

Q. I'd like to ask you, Mr. Carmichael, if there was a record made, if you recall, of what you said on that occasion?

A. There was—there was no one sitting there making a record. There was a tape recorder there taking down what I said.

Q. Have you since that occasion had an opportunity to read a transcript that was written up of what that recording showed?

A. Yes, sir. I called—they printed something in the paper that I didn't say—

Q. I am not asking you that.

[fol. 1032] Mr. Schroder: I think he has got a right to explain.

The Witness: I have got a right to answer a question.

The Court: Just a moment. Let him ask the question and I will permit Mr. Carmichael to explain it.

By Mr. Cody:

Q. I asked you if you have seen a transcript?

A. Yes, sir.

Q. Of your statement that morning?

A. Yes, sir; I have. Can I explain that, how I saw it?

The Court: Wait just a moment, then I will permit you to explain it.

Mr. Cody: I don't want him to go into some argument with me now about why he said it.

The Court: I am not going to permit him to do so.

Mr. Schroder: I certainly think he ought to be permitted to explain.

The Court: I think he could explain it, Mr. Schroder.

[fol. 1033] Mr. Schroder: Right, sir.

Mr. Cody: I haven't asked him yet what he said on that occasion. I want to get that in first. Then I will let him explain it.

The Court: All right, sir.

By Mr. Cody:

Q. Did you make this statement—

Mr. Lockerman: Whereabouts?

Mr. Cody: On Page 5.

By Mr. Cody:

Q. —referring to Mr. Burnett's occasion when he called your attention to this conversation: "He did have some papers that he said were notes. I did not read these notes." Did you make that statement?

A. I didn't pick them up and read them; no, sir; but I did see the notes.

Q. Did you make that statement?

A. If it is in that transcript, I made it.

Mr. Schroder: That is not contradictory to anything in this case.

The Court: I will let him explain.

[fol. 1034] The Witness: All right. You asked me if I had occasion to read a transcript of this. I picked up a paper a few days later, and the paper had a statement that was attributed to me that I didn't make.

Mr. Cody: Well, Your Honor—

The Witness: Accordingly, I called Mr. James Therrill and told him I wanted a transcript of everything I had said on that tape recording, and he sent it to me, and that is how I got to read it.

The Court: Let me see the notes just a moment. Are you through with him?

Mr. Cody: No, sir.

The Court: All right, sir, go ahead.

Mr. Cody: I am through with the notes. I wanted to lay them out there where he could see them.

The Court: All right; go ahead.

By Mr. Cody:

Q. Do you remember—do you remember making this statement or Mr. Therrill putting this question to you and [fol. 1035] you making this particular answer which I will read; it is on Page 17. "Mr. Therrill: Now, you didn't actually read the notes or go over them with Burnett after he had taken them down?" And your answer: "No, I didn't." Is that correct?

A. If that is what is in that transcript, sir, I am not saying I didn't say it.

The Court: Well, is it correct?

The Witness: Sir?

The Court: Is it correct?

The Witness: It is not correct. I did see the notes, Your Honor.

By Mr. Cody:

Q. In other words—in other words, you misrepresented the facts to Mr. Therrill on that occasion?

A. No, sir; I am not trying to misrepresent anything to anybody.

The Court: I don't think that is a proper way, Mr. Cody. I think that tends to get into argument. You can read what he testified then and what he testified yesterday.

Mr. Schroder: If the Court please, there is no discrepancy between the two.

[fol. 1036] Mr. Cody: I think that is argument.

The Court: That is a matter for argument.

Mr. Cody: It is improper.

The Court: But I don't think his question was proper.

By Mr. Cody:

Q. "Question (By Mr. Therrill): Did Burnett ever relate to you what he had heard over the telephone?" And your answer: "Yes, he did, that day. He told me that very day, as soon as he laid down the phone exactly what he had heard. I guess he told me what he had heard." Did you make that statement?

A. If that is in there, sir, I made the statement.

Mr. Lockerman: And will you finish it where he goes on to say "I don't know".

The Court: Address the Court instead of interrupting like that; address the Court, and I will—

Mr. Lockerman: Well, Your Honor, I do take exception to that.

The Court: I say, you can address the Court for that, Mr. Lockerman.

[fol. 1037] Mr. Lockerman: Yes, sir.

The Court: All right.

By Mr. Cody:

Q. Now, do you remember that I took your deposition later on June 26, 1963, and I am reading from Page 8, and I want to ask you if this is a correct transcript of the questions and answers propounded to you at that particular time, referring to the notes now. Question: "Did you examine them? Answer: I did not take them in my hands, no, sir. He sat back down at my desk and I sat down in a chair next to it and he was telling me. He laid these notes out and he was telling me the things that I just mentioned. He laid the notes down on the desk. They were laying there and I did not see them, but I—"

Mr. Lockerman: If Your Honor please—

The Court: Yes, sir.

By Mr. Cody:

Q. "—did see them."

The Court: Just a moment; just a moment.

Mr. Lockerman: I have a copy of that transcript, and he is over on Page 9, and he says, "He laid the notes down [fol. 1038] on the desk. They were lying there." My copy reads, "And I did see them."

Mr. Cody: I am fixing to correct it.

The Court: Let him get to it, then.

Mr. Lockerman: I mean, Mr. Cody read, "I did not see them." My copy reads, "I did see them."

The Court: He read it incorrectly, is that what you are saying?

Mr. Lockerman: Yes, sir.

Mr. Cody: Yes, sir; I am fixing to correct it.

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By Mr. Cody:

Q. "He laid the notes down on the desk. They were laying there, and I did see them, but I did not pick them up and look at them." Is that your answer?

A. That is absolutely true, sir.

The Court: Give me a copy of the deposition.

By Mr. Cody:

Q. Now, Mr. Carmichael, do you remember that on June 26, 1963, you gave another deposition in which these notes were discussed?

[fol. 1039] A. I think it was all at the same time and at the same place.

Q. One I did not participate in, however. This was the deposition taken by Mr. McCall?

A. Yes, sir.

Q. A Birmingham attorney?

A. Yes, sir.

Mr. Lockerman: Your Honor please—

The Court: Yes, sir.

By Mr. Cody:

Q. On Page 78—

Mr. Lockerman: —I don't happen to have that; may I have the Court's copy?

The Court: I don't think we have a copy of it. I presume he was sworn in another matter. I don't have a copy of it.

Mr. Cody: Mr. McCall was present. Maybe he has a copy he can lend him.

The Court: I don't need it; go ahead.

Mr. Cody: Can I read along with him?

[fol. 1040] The Court: I think you can probably lend one to Mr. Lockerman, if there is another one available.

Mr. Schroder: You don't mind if I sort of look on?

Mr. Cody: No.

The Court: Let Mr. Schroder look over your shoulder.

By Mr. Cody:

Q. I am starting to read—

The Marshal: Let's have order, please.

The Court: Yes, sir.

By Mr. Cody: :

Q. —from the bottom of Page 78 this is Mr. McCall's question, still speaking of the Burnett matter: "He did inform you on that occasion that Coach Butts told 'Bear' Bryant that Georgia at this time had one of the greatest football players that had ever played in the history of the University of Georgia?" And your answer: "I don't remember the name of the player, but I do remember that he said that one of the players was a great football player, one of the greatest, he said." Question: "And they had added two new coaches?" Answer: "And they had added two new coaches." Now, getting down to the notes, Question: "I [fol. 1041] believe you stated earlier that you saw some notes?" Answer: "Yes, sir." Question: "Were the notes on a single sheet of paper or many sheets of paper?" Answer: "No, on several sheets of paper. I don't know the exact number." Question: "There was more than one sheet?" Answer: "Yes, sir." Question: "Was it in pen or pencil?" Answer: "That I cannot remember, sir. I just don't know." Question: "Was it on a yellow piece of paper like this or a white piece of paper?" Answer: "There again it was on a pad that I had on the desk. I believe actually—I believe it had a gray tint to it. It was not white, it was not yellow, I don't believe. I believe the paper had a gray—whitish-gray tint to it." Question: "Was it a ruled piece of paper or just blank?" Answer: "No, sir, a piece of paper—a plain piece of paper except for the man's name that we got it from that was on it, I believe." And then turning to Page 81. Question: "Did he say anything about the notes he took down as part of this conversation?" Answer: "Well, he had the thing there about the ballplayer being great and a note, and as I say, I didn't pick them

up and read them, but I remember that particular thing, and also about the two coaches that were added and also about the fact of the Sunday—fact of the Sunday bit that I mentioned.” And then turning to Page 90, still discussing the notes, Question: “Would you recognize the notes, Mr. Carmichael, if you saw them again?” Answer: “I am sure I would, sir.” Question: “And were they in a stack or pile, or were they spread out on the desk?” Answer: “They were on several pieces of paper, and while he was talking to me he laid them out one at a time, you know, laid them out on the desk there in front of me.” Question: “He never related to you what was on those several pieces of paper?” [fol. 1042] Answer: “He didn’t pick them up and read them, no, sir, if that answers your question.” Question: “No. I am not asking you that. But as he was putting them out in front of you or placing them in front of you, he never told you what was written on those several pieces of paper?” Answer: “He was telling me about this fellow being a great player and about the coaches and about him asking if he would be home on Sunday. This is the three things.” Question: “Those are the only things he told you about—only three things he told you about?” Answer: “This is the only three things I can recall him stressing anything on.” Question: “You never looked at those notes outside of seeing them on the desk?” Answer: “I never picked them up. I looked at them there on the desk.” Question: “Did you read any of it—any of the writing on the paper itself?” Answer: “No, sir, I didn’t pick them up to read them.” Have I correctly read the transcript of your testimony given in that case?

A. If that is my transcript, sir, you correctly read it, with the exception that I did see the notes and I did see what was written on them, and I will say that now, sir.

Q. Then you have changed your testimony, haven’t you, Mr. Carmichael?

A. If it says I didn’t, I am correcting it to say I did; yes, sir.

Mr. Schroder: Your Honor, that doesn’t—

By Mr. Cody:

Q. Do I understand your testimony now to say you—
[fol. 1043] Mr. Schroder: Read it back to him—excuse
me, Your Honor. I don't think he fully understood.

The Court: Let him read that portion back.

Mr. Cody: What portion do you mean?

The Court: About reading the notes or not reading the
notes.

Mr. Cody: All right, sir.

By Mr. Cody:

Q. Question: "Did you read any of it—any of the writing
on the paper itself?" Answer: "No, sir, I didn't pick
them up to read them."

A. That's right. I didn't pick them up to read them,
but I did read them, sir, and they were laid right under
my nose to where I could see them, so, I am testifying now
that I did read what was wrote down there.

Q. Now, getting back to the evidence which you gave to
Mr. Therrill when you were there, on Page 5: "He did have
some papers"—referring to Mr. Burnett—"that he said
were notes. I did not read these notes."

Mr. Lockerman: If Your Honor please, he has already
read that. I marked it as having been read a moment ago.
[fol. 1044] The Court: Is this some of the testimony, or is
this--

Mr. Cody: This is the same, but I wanted to get back to
it to see if he wants to correct this statement.

The Court: I don't think you can keep repeating, Mr.
Cody.

By Mr. Cody:

Q. Mr. Carmichael, you—

Mr. Cody: Let me get one other paper here.

By Mr. Cody:

Q. Where had you been on the morning of September 13, Mr. Carmichael?

A. I believe I had been to my dentist; Dr. Davis in Buckhead.

Q. Who is that?

A. Dr. Davis.

Q. What Davis is that?

A. H. M. Davis.

Q. At Buckhead?

A. Yes, sir.

Q. You know what time you left his office?

A. Well, it was early in the morning I went, and I believe that I—in fact, I am not a hundred per cent positive that is where I went, but I believe that is the only place I could have gone. I will put it that way to you, sir.

Q. Do you have any independent recollection other than that where you might have been?

[fol. 1045] A. I haven't even asked Dr. Davis if I was there that day, but I am pretty sure that is where I was at.

Q. I believe you testified on direct-examination that Coach Leahy at Notre Dame brought his football team down there and brought his players out there to eat with you.

A. I have fed a lot of football teams out there, sir.

Q. Did Coach Butts bring some of his team?

A. No, sir; I never fed the Coach's team.

Q. Did Coach Butts come out there and eat with you?

A. As I mentioned, he eat out there the day I met him; yes, sir.

Q. Well, did he come out there thereafter?

A. No, sir; he was not a regular customer of mine.

The Court: Didn't we go over that yesterday?

Mr. Cody: Yes, sir.

By Mr. Cody:

Q. Did I ask you yesterday, Mr. Carmichael, if at these various businesses that you operated, these night spots, if you had floor shows in all of them?

A. Yes, sir; you did.

Q. What was your answer?

A. In all of the supper clubs I operated I did have floor shows. I did not have a floor show, however, at this place we mentioned earlier. All I served there was food; it was strictly a restaurant. But in the supper clubs I had I did have floor shows in all of them.

[fol. 1046] Q. What—would you mind giving me the names, again, of these supper clubs?

A. Well, I had—

Mr. Lockerman: We went over all that yesterday.

The Court: We went over that, Mr. Cody. What is the use of repeating it?

Mr. Cody: I believe Your Honor is right. I think it is improper.

The Court: There was one at the Clermont Hotel, and so forth.

Mr. Cody: I withdraw the question.

The Court: Is there anything further?

Mr. Cody: Yes, sir.

By Mr. Cody:

Q. I want to find out from you—I want to find out from you, Mr. Carmichael, what the nature of these floor shows were.

The Court: What is the relevancy of that?

Mr. Schroder: What is the relevancy of that?

[fol. 1047] The Court: I think we are getting off—

Mr. Cody: I withdraw that if I can't connect it up.

The Court:—far afield.

By Mr. Cody:

Q. Let me ask you this question, Mr. Carmichael. Did you ever have a conversation with Mr. Scaggs—

Mr. Schroder: Who?

Mr. Cody: Mr. Scaggs.

By Mr. Cody:

Q. —who is an officer of the Foundation Life Insurance Company in which the notes, these Burnett notes were discussed?

A. No, sir; I sure have not.

Q. You have never talked to him about it?

A. I have never talked to Mr. Scaggs about these notes. I have set in on a conversation where it was discussed, but I didn't do any talking.

Q. Do you remember on March the 12th, 1957, filing an application with the City of Atlanta for permit to sell alcoholic beverages or mixed drinks?

A. No, sir; I don't recall that particular date.

Mr. Lockerman: Your Honor, what is the relevancy of that?

[fol. 1048] The Court: I don't know. I was waiting—how do you plan to connect that up?

Mr. Cody: I want to show that he has misstated in this application—

Mr. Schroder: Let him see it.

The Witness: What date is that, sir?

Mr. Cody: March 12, 1957.

By Mr. Cody:

Q. Is that your signature on that paper?

Mr. Schroder: Do you have another copy of it?

Mr. Cody: What?

Mr. Schroder: Do you have another copy of it?

Mr. Cody: No, no.

The Witness: That is my signature; yes, sir.

[fol. 1049] Mr. Schroder: May I, as Mr. Butts' attorney, have a chance to look at the paper?

The Court: Yes, sir; yes, sir.

Mr. Schroder: I haven't seen it.

The Court: I haven't either; I don't know the nature of it.

By Mr. Cody:

Q. Do you see the fifth question on that application?

Mr. Schroder: May I see what it is, Your Honor, that he is referring to?

By the witness:

A. (By the witness) They are not numbered. Would you like to read it, sir?

Q. "What was—"

The Court: Just a moment; just a moment. I don't know what is in that affidavit.

Mr. Schroder: I don't either. May I look at it before he goes into it, Your Honor?

Mr. Cody: Yes, sir.

[fol. 1050] The Court: Yes, sir.

Mr. Cody: That is all right.

The Witness: I have no objection to that.

The Court: While this discussion is taking place—you may step down, Mr. Carmichael.

The Witness: Yes, sir.

(Whereupon the witness was excused from the stand.)

The Court: I will permit the jury to refresh themselves on the outside from now until twenty minutes of twelve, and, as previously, I must admonish you not to discuss the case among yourselves or permit anyone to discuss it in your presence during this fifteen-minute interval. You may now pass out; everyone else remain seated.

The Marshal: Everyone else remain seated, please.

(Whereupon the jury retired from the courtroom at 11:23 a.m.)

The Court: What is it?

Mr. Schroder: This is the document.

[fol. 1051] Mr. Cody: You want me—I can give you the substance of it.

The Court: All right, sir.

Mr. Lockerman: Let him read it.

The Marshal: Let's have order, please.

Mr. Schroder: His Honor will know what it is when he takes one look at it.

Mr. Cody: Might as well take a look at this one at the same time. It's another one.

The Marshal: Everyone remain seated, please.

The Court: Let me see the other one.

Mr. Cody: I'd like to state what the relevancy of it is.

The Court: Yes, sir.

Mr. Cody: I want to show to the Court that on two different occasions he applied to the City of Atlanta for license—[fol. 1052] permit to sell drinks, which is the substance of that application.

Mr. Schroder: I think the application is to sell beer.

Mr. Cody: It's what they call a pouring license, but let's—

Mr. Schroder: Well, it reads "beer."

The Court: Is that the legal pouring license?

Mr. Cody: I think that is what some people call it, but I want to prove by this instrument that they asked him on both occasions whether or not he had ever been convicted of a crime. If Your Honor will let me see it just a minute, I don't want to misquote the application, and I want to show the first one—

Mr. Schroder: I thought you didn't have any extra copies.

Mr. Cody: The first one having been signed on the 2nd day of July, 1940, where it says: "Have you ever been convicted or plead guilty to a crime in any court?" The answer to which he says is "no". And I expect to show that he was convicted on two different occasions, one in the State of Ohio and one in Fulton County, Georgia. One of them, the conviction in Fulton County, Georgia, being in connection with the illegal sale of liquor, and was fined five hundred [fol. 1053] dollars. And I say it goes to the credibility of the witness when a misrepresentation of that sort is made; and, secondly, in regard to the—now, the conviction in Fulton County, however, was not until after that particular application was made, so the one—it was in 1949. Now, this March 12, 1957, they asked him: "Have you ever been con-

victed or plead guilty to a crime in any court"? And he made a checkmark by the answer, which says: "Yes". "If so, state the offense and date." Then he puts "1932 but I was not guilty and was released." I want to show to the Court that that is a false statement. I have a duly authenticated copy of the proceedings in which he was tried and convicted and served a sentence in connection with that conviction. And I say that it goes to the credibility of this witness, and we are right down to a point in this case, Your Honor, where credibility of a witness—

The Court: All right. 1940; that's twenty—he made an explanation of it. 1940; that's twenty-three years ago.

Mr. Cody: Yes, sir.

The Court: All right, sir; now, what is—

Mr. Cody: I say that on the—on the credibility of a witness it is a very important issue in this case, because he has stated that these are different notes from the ones which he was first shown when this Burnett affair first came to his attention, and I say that the credibility of a witness in that [fol. 1054] respect is most important.

The Court: Oh, I agree with you; credibility of a witness in any case is most important, but on the second question, which was in '57, he says—he says, "1932—" I don't think that is correct; I think it was 1933, is my recollection.

Mr. Cody: Right, sir.

The Court: "But I was not guilty and was released." I don't know whether that is a false statement or not. Most anybody is never guilty, even though they—and released, they are eventually released.

Mr. Cody: But that is not a correct answer. This question says: "Have you ever been convicted and plead guilty?" My point is, he was tried and convicted.

The Court: That is in 1940, the application you have there.

Mr. Cody: No, sir; this is '57.

The Court: Oh, I must be—I have got the '57 one here. In '57 he says—"Have you ever plead—if so, state the offense and date." "1932." That was, as I say, incorrect; it

was 1933. "But I was not guilty and I was released." I [fol. 1055] don't know whether that is a false statement or not.

Mr. Cody: I think it is for a jury to determine. I think the best that can be said in his favor, it is evasive; but I think it is false.

The Court: These are beer permits according to the petition.

Mr. Cody: Yes, sir. Look at the—look at the—we expect to show the '49, the 1949 conviction in Fulton County.

The Court: All right, sir; what about that?

Mr. Cody: That would—

The Court: Is that a crime involving moral turpitude?

Mr. Cody: It wouldn't matter. It is a misstatement in this application; it is a misrepresentation to the public authorities, and it goes to the credibility of this witness. That is the—that is the purpose in the City officials undertaking to issue these licenses to see that they are issued to people without a criminal record.

The Court: Well, what is your '47? Is that an application for a beer license?

[fol. 1056] Mr. Cody: '49. No; the '49 was the date of the conviction that I referred to in Fulton County.

The Court: What was that for?

Mr. Cody: In which he was tried and convicted and fined five hundred dollars.

The Court: Well, that would not be a crime involving moral turpitude.

Mr. Cody: No, sir, it would not. We are not talking about impeachment; we are talking about credibility.

Mr. Schroder: If the Court please—

The Court: Go ahead.

Mr. Schroder: —I am asking for a copy of the conviction. Mr. Cody is standing up here saying he was convicted, and I ask for a copy of the conviction; he says he doesn't have it. He is talking about this '47 thing?

The Court: In Fulton County.

[fol. 1057] Mr. Cody: That is a matter of proof.

Mr. Schroder: Well, do you have it?

The Court: The Fulton County—the Ohio conviction, I have seen that, but I am not familiar with Fulton County.

Mr. Cody: Yes, sir; I have that, and I propose to introduce it in evidence again, but the conviction was on March the 22nd—no, it involved a matter that occurred in 1949, but was tried on March 22nd, 1950, in the Criminal Court of Fulton County, case number 225,584. I will be prepared to present a copy of that to the Court if—

Mr. Schroder: As I understand it, that is the only way he could prove it is by a certified copy.

The Court: He is not attempting to do that. I believe, Mr. Schroder, he is trying to show that the witness made application for a beer license, I assume under ordinances of the City of Atlanta, and in that application he made a sworn statement to the effect that he had never been convicted of a crime.

Mr. Schroder: You mean—

The Court: And I assume—I haven't seen that particular, your later application, the application he actually had been convicted of a crime. That is a proper way of impeaching him, but I am not going to let you go back into this '33 conviction. I don't think he—there is a question in my mind whether he improperly answered that question, but on your liquor violation; if you have—I assume he would admit it, and if he doesn't, that is a matter—

Mr. Cody: All right, sir.

The Court: But I am not going to let you go back into that '33 one.

Mr. Schroder: Just a minute.

Mr. Lockerman: May I point out something to the Court?

The Court: Yes, sir.

Mr. Lockerman: He is claiming he improperly answered this question that he is referring to, and I assume he is talking about the one of March 12, 1957, application for beer license. The question was: "Have you ever been convicted

—" and then they have struck out, you know, "or plead guilty to a crime in any court." There is a—

Mr. Schroder: He checks "yes".

[fol. 1059] Mr. Lockerman: He checks "yes". The form itself has two answers, one "yes" and one "no". This copy which he has furnished to us shows he checked the answer "yes, I have been convicted", and then he shows that it was in 1932.

The Court: Well, I am not going to let him go into that. What I was questioning him about was the violation of some liquor law in '47, '49.

Mr. Schroder: Violation of some liquor law in '47 or '49?

The Court: That is what he said.

Mr. Schroder: Well, he answered "yes".

The Court: How many applications do you have there, Mr. Cody?

Mr. Cody: Two.

The Court: Let me see the second one. I have only seen one of them. I had two copies of one; I mean, they are the same one.

Mr. Lockerman: That is the one in 1957.

[fol. 1060] The Clerk: Let me have those two?

Mr. Cody: Here is one of 1957, March 12.

The Court: I have that one. Where is the other one?

Mr. Cody: Here it is. I thought it was given to you.

The Court: Well, the one on July 22, 1940, they asked the question: "Have you ever been convicted or plead guilty to a crime in court?" He says, "No."

Mr. Lockerman: That's right. That was twenty-three years ago.

Mr. Schroder: And the liquor law hadn't been violated.

The Court: I am going to exclude that evidence. I want to be fair to the witness. I am going to rule it out. I want to talk—I want to ask the witness some questions when he comes back.

Mr. Cody: Are you ruling out the 1957?

The Court: I am ruling both out. Let's take a recess for ten minutes.

[fol. 1061] (Whereupon Court recessed at 11:35 a.m., reconvening at 11:52 a.m.)

After Recess

The Court: You may continue. Did you want some more questions from Mr. Carmichael?

Mr. Cody: Yes, sir. I thought the Court said he wanted to ask him some questions.

The Court: No, sir; I am not going to ask him any questions.

Mr. Cody: I have one more.

The Court: You have one more?

Mr. Cody: I want to ask him about that—

The Court: All right, sir; all right, sir; let him come back in.

JOHN C. CARMICHAEL having resumed the stand, testified further as follows:

[fol. 1062] Recross examination (continued).

By Mr. Cody:

Q. Mr. Carmichael, in March of 1950 were you tried and convicted in the Criminal Court of Fulton County on the illegal charge of liquor?

A. No, sir; I don't believe so. If you have got a record, sir, to say I was, I was.

Q. I am asking you—

A. I don't ever remember being charged in my life with the illegal sale of liquor.

Q. Were you tried in the Civil Court of Fulton County and convicted of any such charge—

A. I was tried—

Mr. Schroder: They don't try those cases in the Civil Court of Fulton County.

By Mr. Cody:

Q. In March of 1950—

Mr. Lockerman: Your Honor, that is not the proper way to do it. I think he has to have the record of conviction.

Mr. Cody: I will get the record.

The Court: No, sir; he can ask him, first, and if he denies it, then he brings forth the record. If he admits it—

The Witness: I am denying I was charged with the sale of—illicit sale of liquor.

[fol. 1063] By Mr. Cody:

Q. In March of 1950 in the Criminal Court of Fulton County, what were you charged and tried on?

A. I was charged with being in possession of out-of-state liquor without a Georgia stamp on it.

Q. Were you convicted?

A. Yes, sir.

Q. Were you fined or did you serve a sentence?

A. I was fined a fine, sir.

Q. What is that?

A. I did not serve a sentence, no, sir.

Q. You were fined? How much?

A. To the best of my recollection it was five hundred dollars.

The Court: How is that admissible, Mr. Cody?

Mr. Cody: In connection with this—with the misstatement in the application for this license which was subsequently applied for.

The Witness: That was seven years later.

The Court: All right, sir, go ahead.

Mr. Cody: I have one other question that I want to clear up.

By Mr. Cody:

Q. Did I understand you to say in your testimony yesterday, Mr. Carmichael, when Mr. Schroder was asking [fol. 1064] you about these particular notes which are on the Judge's desk, you made this answer: "No, sir; these are not the same notes that Mr. Burnett handed me."

A. Showed me; he didn't hand them to me; he showed them to me.

Q. Then, is it your testimony now that you did not say yesterday that they were handed to you?

A. If I did, I was in error.

Redirect examination.

By Mr. Schroder:

Q. This matter that you were just questioned about in relation to the out-of-state liquor, you testified about that to Mr. Cody when he took your deposition, didn't you?

A. I certainly did.

Q. You gave him all the details then?

A. I certainly did.

Q. And what were the details?

A. The details were that I bought some whiskey from a gentleman from Kentucky. It had Kentucky stamps on it. I did not buy this whiskey to sell; I had no intention of that. I used it—I was using it for a gift to give away for Christmas presents. That was my reason for buying it. And a fellow by the name of John Bradley, who had charge of all the liquor associations in Georgia, found out that I had this whiskey, and he was getting about twenty cents a case on all Georgia liquor that had Georgia stamps on it, and he reported it to the State Revenue Department that I had some whiskey with out-of-state stamps on it. The State [fol. 1065] Revenue agent came to where I was and had it and made a case against me.

Q. Just for possessing it?

A. Just for—well, it wasn't against the law to have the whiskey, Mr. Schroder; it was against the law not to have a Georgia stamp on it, which I didn't even know.

Q. It had a Kentucky stamp on it?

A. Right. I didn't even really know that. That was—anyway, I was charged with that, but I did not sell any of the liquor, and I have not been charged with the illegal sale of it, I am sure.

Q. All right, sir. That is what you told Mr. Cody some months ago?

A. That is exactly right, sir.

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By Mr. Schroder:

Q. What is the name of the concern at the bottom of each page on those notes?

A. Well, it is—the name says, "Compliments of H. E. Knight, Banner Printing Service, Conley, Georgia" with his telephone number.

Q. How many pads with that name on them did you have in your office on Eleventh Street?

A. Oh, probably forty to fifty.

Q. When the office was closed on Eleventh Street, were the pads taken home by those who worked there?

A. By me and Mrs. Burnett; yes; we divided up all the little things in the office that were any good, and we figured we could use these scratch pads, and both of us took some of them.

Q. All right, sir. When is the first time that a photostat or other copy of those notes—when is the first time they have [fol. 1066] ever been or were they ever shown to you?

A. Well, the first time I ever saw a copy of these notes was when the Attorney General and Legislative Committee from the State of Alabama came over here to Atlanta and questioned me, and they showed me a photostatic copy of those notes.

Q. What did you at that time tell them with respect to whether or not they were copies?

The Court: We are getting into the investigation of the Attorney General of Alabama—

Mr. Schroder: Oh; all right, sir.

The Court: —and Alabama, and I don't think that would be—I think we are opening the door, Mr. Schroder.

Mr. Schroder: All right, sir.

By Mr. Schroder:

Q. The first time then—do you remember about when that—do you remember about when that was that you first saw a reproduction of these notes?

A. I don't remember the exact date, Mr. Schroder.

Q. Was it after you had given the answers to the questions propounded to you by Mr. Terrill that Mr. Cody was asking you about this morning?

A. It was after I talked to Mr. Terrill; yes, sir.

[fol. 1067] Q. When you were being questioned by Mr. Terrill, did he show you a reproduced copy of these notes?

A. He showed me nothing.

Mr. Schroder: That's all I have, Your Honor.

The Court: Any further questions of Mr. Carmichael? Let him go down.

Mr. Cody: You can be excused.

Mr. Schroder: Just a minute.

The Court: Just a moment, Mr. Carmichael; they are conferring.

Mr. Schroder: One more question.

The Court: Let him come back to the stand.

Mr. Schroder: I should have consulted my associate before I said that was all.

By Mr. Schroder:

Q. How did these notes, being Defendant's Exhibit 12, differ from those which Mr. Burnett showed you on Sep-
[fol. 1068] tember 13 in the handwriting or any way that you can describe?

A. Well, let me answer that by saying this, Mr. Schroder. Mr. Burnett is quite a doodler, and on the original notes that Mr. Burnett showed to me immediately after he was supposed to have heard this conversation, I recall very vividly that on the first page he showed me there was only one thing wrote on it; there was quite a bit of doodling on the notes that he had, but the only thing that was on that front page outside of doodling was the name of Coach Wally Butts and Coach "Bear" Bryant. On this page the word "Coach" is not on here. This is the only thing that was on that page except the doodling, and it was not written across that page this way at all; it was written this way, sideways. The balance of these notes I did not see. I did not see page 2 at all or page 3 or page 4 or page 5 or page 6 or page 7; none of these pages are the pages that Mr. Burnett laid down in front of me that morning and showed me. He did have four or five pages in his hand, and on one page was the words "Coach Wally Butts" and "Coach 'Bear' Bryant". On another page was wrote a name of a football player with a lot of doodling on it, and it had on there "great football player" or words to that effect, "greatest in history" I believe were his exact words. On another page that he laid down it had "call Sunday" or "Will you be home Sunday, will call"; that is the way it was, "Will you be home Sunday, will call." There was no notes at all with some of the things you have on these notes, that are on these notes. There was no such thing as "10:40 a.m." or "641" or "September 13" or "Jackson 5-3536" or "Athletic office" or any of these things. There were none of these things on the notes Mr. Burnett showed to me.

[fol. 1069] Mr. Schroder: All right, sir; that's all, Your Honor.

The Court: All right, sir, any further questions?

Recross examination.

By Mr. Cody:

Q. How long did you say you had known Coach Butts?

A. Coach Butts?

Q. Yes.

A. I have been acquainted with him for about fifteen years.

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HAROLD HECKMAN called as a witness on behalf of the defendant, after having first been duly sworn, testified as follows:

Direct examination.

By Mr. Cody:

Q. Your name is Mr. Harold Heckman?

A. That's right, sir.

Q. How long have you lived in Athens, Mr. Heckman?

A. Forty-two years.

Q. Are you connected with the University of Georgia?

A. I am head of Accounting and professor of Accounting at the University.

Q. Are you a member of the Athletic Board?

[fol. 1070] A. Yes; I am.

Q. How long have you been a member of that Board?

A. Since 1946 or '47.

Q. Would you—

A. Right after the War.

Q. Would you give the Reporter the personnel of that Board, if you can remember the entire list?

A. Mr. Bolton; Mr. Driftmier, Mr. Biscoe, Mr. Mills, Dr. Scott, Mr. Sankin—Georlie Sankin has been a member—Mr. Tommy Parris, Mr. Bradshaw.

Q. Is Dr. Aderhold a member of that Board?

A. He is chairman of the Board.

The Court: How many are professors are connected with the University and how many are alumni?

The Witness: The majority.

The Court: Can you break them down that way?

The Witness: The majority of the Board has to be connected with the University.

Mr. Cody: Faculty members?

The Witness: Faculty members of the University.

[fol. 1071] By Mr. Cody:

Q. What is the purpose of the Athletic Board, Mr. Heckman?

A. To administer the athletic program of the University, the intercollegiate program.

Q. How long have you known Wallace Butts?

A. Since 1946. He came one year while I was away.

Q. Have you known him intimately during that time?

A. I have known him; I wouldn't say intimately; I have known him; I have met with him very often. I have had very numerous meetings, consultations with him. I would say I know him very well.

Q. State whether or not you know the general character of Wallace Butts?

A. I think I do.

Q. Is it good or bad?

A. I would say now it is bad.

Mr. Schroder: If the Court please, I think the proper question is reputation, is it not?

The Court: No; it's character, Mr. Cody—Mr. Schroder.

Mr. Schroder: Well, I just—

By Mr. Cody:

Q. Could you state to the jury—

The Court: The proper question is: Please state whether you know the general character of the witness in the community in which he lives. That witness' answer

[fol. 1072]

is "yes" or "no." What is that character, good or bad? And then—

Mr. Schroder: That's right.

Mr. Cody: You reading Code Section 1804?

The Court: Yes, sir. I am familiar with that. I was reading from Professor Green's book on Evidence, taken from the Code section.

By Mr. Cody:

Q. Mr. Heckman, would you tell the jury whether or not, from that character, you would believe Mr. Wallace Butts on oath?

A. I would not.

Q. How long did you say you had been a member of the Athletic Board?

A. Since immediately after the War, about 19—either 1946 or '47.

Q. Will you state to the jury whether or not this opinion that you have expressed with respect to Mr. Wallace Butts' character, if that applies prior to this Bryant affair?

Mr. Schroder: I don't think—

The Court: I don't think you can go any further. I think the law limits you to the questions you propounded. [Vol. 1073] Mr. Cody: I think you are right, Your Honor.

By Mr. Cody:

Q. Have you observed—as a member of the Athletic Board, have you formed any opinion with respect to whether or not the conduct of Wallace Butts has hurt the University of Georgia?

Mr. Lockerman: Your Honor—Your Honor please—

The Court: I don't think that is a proper question.

Mr. Cody: I think it is.

The Court: Let the jury go to the jury room.

(Whereupon the jury retired from the courtroom at 1:59 p.m.)

Mr. Cody: Your Honor—if Your Honor has any doubt about it, I will withdraw it. I admit it's a debatable question.

The Court: Yes, sir; I do have doubts about it.

Mr. Schroder: Well, bring them back in.

[fol. 1074] The Court: Let them—if there is—while they are out, if there is any other question on this, I think now is the time.

Mr. Cody: He has—he has stated in his direct-examination, Mr. Schroder, that he has never done anything to hurt the University of Georgia.

The Court: Yes, sir; but under—under character, as I understand it, the way you—

Mr. Cody: We are beyond—

The Court: —are limiting it, under the Cox versus Strickland case in 101 Georgia, and I think that is the leading case not only in Georgia law, all the Federal courts have allowed it. But you are limited to these particular questions.

Mr. Cody: We are beyond the character evidence now. I was getting off into something else.

The Court: But you were bordering—you were bolstering your character evidence, as I understood your question.

Mr. Cody: I was not—that was not my purpose.

[fol. 1075] The Court: Well, you were—it is my recollection your question was: Have you noticed his conduct, on the Athletic Board, as a member of the Athletic Board, have you noticed his conduct? And I don't think that is admissible.

Mr. Cody: I will withdraw the question.

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Examination.

By the Court:

Q. How many members of the Board are there?

A. I believe it's nineteen.

Q. And the majority—

A. Are faculty.

Q. —are faculty?

A. Connected with the University.

Q. And the others are alumni? How are the others appointed, two by the Alumni Association?

A. Yes, sir.

Q. And the others appointed by whom?

A. By the President, I believe.

Q. The President?

A. Yes, sir.

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WILLIAM THOMAS BRADSHAW called as a witness on behalf of the defendant, after having first been duly sworn, testified as follows:

[fol. 1076] Direct examination.

By Mr. Cody:

Q. Mr. Bradshaw, will you give the Court Reporter your full name?

A. William Thomas Bradshaw.

Q. Where are you from, Mr. Bradshaw?

A. Canton, Georgia.

Q. Canton?

A. Yes.

Q. Are you an alumnus of the University of Georgia?

A. Yes, sir.

Q. When did you finish?

A. 1951.

Q. Did you play football?

A. Yes, sir.

Q. Were you there while Mr. Wallace Butts was coach?

A. Yes, sir.

Q. Are you a member of the Athletic Board of the University of Georgia?

A. Yes, sir.

Q. How long have you been a member of that Board?

A. January of '61.

Q. In January of 1963, did you have an opportunity to have a conference with Mr. Wallace Butts?

A. Yes, sir.

Q. Where did that conference take place?

A. Mr. Cook Barwick's office.

Q. Here in Atlanta?

A. Yes, sir.

Q. Can you pinpoint the date for us?

A. The 18th—I believe it was the day of the Touchdown [fol. 1077] Club banquet that night; I believe the 18th, Saturday.

Q. The 18th?

A. Yes, sir; I believe so.

Q. Was anyone present other than you and Wallace Butts?

A. Mr. Barwick; yes, sir.

Q. Did he subsequently leave the meeting, Mr. Barwick?

A. No, sir.

Q. Do you remember the subject matter of that discussion?

A. Yes, sir.

Q. Will you tell us what it was.

A. It had to do with our bringing it to Coach Butts' attention that it might be wise for him to resign as athletic director of the University of Georgia.

Q. What did he say?

A. He said he would contact Dr. Aderhold and would comply with his wishes.

Q. Did you acquaint him at that time with the reason for that request?

A. Yes, sir.

Q. Were you speaking individually or for the Board of—

A. We were asked by the Executive Committee of the Board to speak to Coach Butts.

Mr. Lockerman: If Your Honor please, I don't think he ought to go into any conversation he had outside the presence of the plaintiff.

The Court: I will let him state his authority for talking [fol. 1078] to him. You were authorized by the Executive Committee of the Athletic Board?

The Witness: To speak to Coach Butts on this subject; yes, sir.

The Court: And you were complying with that request?

The Witness: Yes, sir.

By Mr. Cody:

Q. What was the reason for making this request?

A. There were several.

Mr. Schroder: I don't think their reason would be relevant unless that was pointed out.

Mr. Cody: That is what I am trying to get to.

Mr. Schroder: Ask it that way.

The Court: Just a moment; just a moment.

Mr. Schroder: Your Honor, he is—

The Court: I will let him ask whether or not he stated [fol. 1079] to Coach Butts in Coach Butts' presence the reasons for the resignation.

The Witness: Yes, sir.

By Mr. Cody:

Q. You did?

A. Yes, sir.

Q. What was that reason?

A. That Coach Butts' many business interests were taking so much of his time away from his duties as athletic director, the fact that he had become involved with loan companies, and this has been brought out in the newspapers in Atlanta which didn't do anything for his image as an athletic director of the University. I believe those were the main two.

Q. Can you recall any others?

A. Not that we said to Coach Butts. There were others mentioned at the Executive Committee meeting, but we didn't see any sense in bringing them up at this time.

Q. Do you—do you know whether or not Coach Butts thereafter went to see Dr. Aderhold? Don't go into any conversation with him if you were not present, but do you know whether or not—

A. He went to see Dr. Aderhold.

Q. Did Coach Butts thereafter resign?

A. Yes, sir.

Q. Now, what was the date on that resignation?

A. That would be effective either June 1st or June 30.

Q. What date did he resign, not the effective date?

[fol. 1080] A. Oh, this was the following Monday after our conversation.

Q. That would be the 20th?

A. Yes, sir.

The Court: You all speaking—are you referring to January or February?

The Witness: January 20.

Mr. Cody: January 20.

The Witness: Yes, sir; January 20. I would like to say this—

Mr. Schroder: Wait a minute, now, I think—

The Court: I think the orderly way to conduct it, Mr. Bradshaw, is to let Mr. Cody ask you the question and you answer.

The Witness: I was going to explain.

The Court: That is all right. You want to explain a previous answer?

The Witness: Yes, sir.

[fol. 1081] The Court: You can explain your previous answer.

The Witness: I know that he went to see Dr. Aderhold the following Monday. I know that he did resign, and I feel certain that it was at this time that he did turn in his resignation in the form of a letter.

By Mr. Cody:

Q. Are you familiar—

Mr. Schroder: I think the letter would be the highest and best evidence, if we are going into the contents of the letter, unless this witness—

By Mr. Cody:

Q. Mr. Bradshaw—

The Court: Isn't that letter in evidence?

Mr. Cody: That is another letter.

Mr. Schroder: I don't think it is—I say that would be the highest and best evidence, the contents of the letter would be the letter itself.

The Court: Yes, sir; I was under the impression that letter was in evidence.

[fol. 1082] Mr. Cody: That is another letter you have reference to. That is the one of February—

The Court: I excluded that testimony, then, if—the letter would be the highest and best evidence. I sustain the objection.

By Mr. Cody:

Q. Mr. Bradshaw, will you explain to the Court, state to the Court whether or not at the time you had this conversation with Coach Butts on January 18 you had any knowledge, directly or indirectly, of the Bryant affair which later came to light?

A. No, sir; I have no knowledge.

Q. This preceded?

A. Yes, sir.

Q. Now, when the—when the so-called Bryant affair came to light, which is involved in this case, do you know whether or not Coach Butts submitted another resignation effective at an earlier date?

A. Yes, sir.

Q. Do you know what effective date that was?

A. Towards the latter part of February, effective immediately, as well as I recall.

Mr. Schroder: Tagain say—

The Court: Is that the resignation that is in evidence? [fol. 1083] Mr. Schroder: I don't know whether that letter is in evidence or not. If it is not, it would be the highest and best evidence.

The Court: If he has seen the letter—

Mr. Schroder: No, sir; he has got the letter itself, and it would be the highest and best evidence.

Mr. Cody: It is already in.

The Court: It is already in? I will let him state a letter of resignation was submitted.

By Mr. Cody:

Q. Mr. Bradshaw, did you attend what is known as a Georgia Touchdown Club meeting in Jacksonville, Florida, when Coach Butts made a speech?

A. No, sir.

Q. Did you attend an Atlanta Touchdown Club meeting on January the 15th, 1963?

A. Yes, sir.

Q. Do you know whether or not Coach Butts made a speech at that meeting?

A. Not a speech; no, sir. Darrell Royal, director of athletics at the University of Texas, made a speech, and Coach Butts may have said something in behalf of Mr. Royal.

Q. Will you state to the Court whether or not you have attended any Touchdown Club meetings of the University [fol. 1084] of Georgia alumni where Coach Butts made any comment about the Athletic Board or the coaching staff of the University of Georgia?

A. No, sir; not any gatherings of that nature.

Q. Did you attend the football scrimmage on September 15—

A. Yes, sir.

Q. —before the Alabama-Georgia game of 1962?

A. Yes, sir.

Q. Where was that scrimmage held?

A. On the regular practice field on Ag Hill.

Q. Was that a sort of closed bull session?

A. Yes, sir; except to people invited by the coaches.

Q. Do you know whether or not Coach Butts attended that practice?

A. Yes, sir; he, along with the rest of the Board, Athletic Board.

Q. Did you see the entire practice that afternoon?

A. Yes, sir.

Q. Do you know whether or not Georgia used, in that practice, the plays they intended to use in the Alabama game?

A. No, sir—I am sure they must have, but I don't know play-for-play that they did.

Q. Mr. Bradshaw, would you state whether or not you are familiar with the general character of Wallace Butts?

A. Well, insofar as being associated with him as my coach and then as athletic director, I would to that extent, Mr. Cody.

Q. From that knowledge, can you state whether or not—
[fol. 1085] The Court: I don't believe that is a proper question. I think you have got to ask the question: Do you know the character and reputation of the plaintiff or the witness, whoever it might be, in the community in which he resides, and the community, of course, doesn't mean confined to the exact community, it is co-extensive with his reputation, but I think you have got to propound the question, Mr. Cody, exactly as the Code sets out.

Mr. Cody: I'd like to call Your Honor's attention to one decision that varies from that.

The Court: Well—

Mr. Cody: It is not necessarily in the community where he lives.

The Court: I didn't say that. I said it is co-extensive with his reputation.

Mr. Cody: I see.

The Court: It can be all over the State or all over the United States. I think you would have to confine yourself to the Code. I mean: Do you know the character and reputation in the community? And you can explain what the community would be.

[fol. 1086] By Mr. Cody:

Q. Do you think you are familiar with his general character in the community?

A. Character or reputation?

The Court: Character, character.

A. (By the witness) I believe so.

Q. From that knowledge, can you state whether or not it is good or bad?

A. I would say "bad."

Mr. Cody: I believe that's all.

The Court: All right, sir. Just a moment—just a moment, Mr. Bradshaw.

Mr. Schroder: No questions.

The Court: No more questions. You may step down, Mr. Bradshaw.

Mr. Cody: Let me ask you one more question.

The Court: You will have to come back to the stand, Mr. Bradshaw.

By Mr. Cody:

Q. Have you—have you been present at any meetings [fol. 1087] where critical remarks have been made by Coach Butts about the University of—

Mr. Schroder: I thought this question had already been asked, and he answered that question. I believe he asked him about speeches. I believe I am correct on that.

The Witness: Yes, sir.

By Mr. Cody:

Q. You have?

A. Yes, sir.

Q. Where was that?

A. One was last year, the night before the Florida-Georgia game in Jacksonville. A Georgia party in the Roosevelt Hotel.

Q. I'd like to ask you one more question, Mr. Bradshaw. Will you tell the Court whether or not, from the general character of Wallace Butts about which you testified, that you would believe him on oath?

A. I don't believe so.

Mr. Cody: I believe that's all.

Mr. Schroder: I didn't understand the answer.

The Court: Sir?

Mr. Schroder: I didn't understand the answer.

[fol. 1088] The Court: He said he didn't believe so.

Cross examination.

By Mr. Schroder:

Q. You know Charlie Trippi?

A. Yes, sir.

Q. You believe him under oath?

A. I believe so.

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R. H. DRIFTMIER called as a witness on behalf of the defendant, after having first been duly sworn, testified as follows:

Direct examination.

By Mr. Cody:

Q. Mr. Driftmier, will you give the Court Reporter your full name?

A. R. H. Driftmier.

Q. Where are you from, Mr. Driftmier?

A. Athens, Georgia.

Q. Are you a member of the faculty at the University of Georgia?

A. Yes, sir.

Q. What are your responsibilities there?

A. I am head of the Department and head of the Division of Agricultural Engineering.

Q. How long have you been connected with the University?

A. Since September, 1930.

Q. Continuously?

[fol. 1089] A. Yes.

Q. The position you have just described, is that one you now hold?

A. Beg pardon?

Q. The position with the University which you have just described, is that one which you now hold?

A. The head of the Department since 1930, the chairman of the Division since 1930 when the College of Agriculture was reorganized.

Q. Are you a member of the Athletic Board?

A. Yes, sir.

Q. How long have you been a member?

A. Since about 1935.

Q. As a member of that Board, have you constantly come in contact with Wally Butts?

A. I have.

Q. In connection with matters pertaining to the University?

A. That's right.

Q. And to the athletic program?

A. That's right.

Q. Please state, Mr. Driftmier, whether or not you know the general character of Wallace Butts in the community.

A. I think I do; yes.

Q. From that knowledge will you state whether or not that character is good or bad?

A. Bad.

Q. From that knowledge of his character, would you state to the Court whether or not you would believe him upon his oath?

A. I would not.

Q. You would not?

A. I would not.

Q. In your services to the University as a member of [fol. 1090] the Athletic Board, have you ever heard Wallace Butts make any critical remarks about the University?

A. I have.

Q. Was that an isolated occasion, or would there be others?

A. About every time the Board of Directors met.

Mr. Cody: I believe that's all.

The Court: All right, any questions, Mr. Schroder?

Cross examination.

By Mr. Schroder:

Q. What is your name, sir?

A. Driftmier.

Q. Driftmier?

A. Right.

Q. You live in Athens?

A. Yes, sir.

Q. You know Charlie Trippi?

A. Yes, sir.

Q. You believe him under oath?

A. I don't know enough about Charlie Trippi.

Q. Do you know Mickey Babb?

A. Beg pardon?

Q. You know one of your students, Mickey Babb?

A. I do not.

Q. Do you know your football captain, Ray Clark?

A. I do not.

Q. Do you know Wallace Williamson?

[fol. 1091] A. No; I do not.

Q. Brigham Woodward?

A. No.

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DR. O. C. ADERHOLD called as a witness on behalf of the defendant, after having first been duly sworn, testified as follows:

Direct examination.

By Mr. Cody:

Q. Dr. Aderhold, will you give the Court Reporter your full name, or initials, if you like?

A. O. C. Aderhold.

Q. What is your position with the University of Georgia, Dr. Aderhold?

A. President.

Q. How long have you been President?

A. Well, 1950—thirteen years.

Q. What part of the State are you from, Dr. Aderhold?

A. I am from Lavonia; Franklin County.

Q. Did you attend the University of Georgia as a student?

A. Yes, sir.

Q. When did you finish?

A. Well, I went there as a freshman in 1919; finished Bachelor's Degree in '23; and then did some work on a Master's Degree until '30 in the summers, and received a Master's degree at that time.

Q. I should be ashamed to ask you that question because—

[fol. 1092] Mr. Schroder: I can't hear either one of them, Your Honor.

The Court: Speak out a little bit louder, please, sir.

By Mr. Cody:

Q. Are you a member of the Athletic Board?

A. Yes, sir.

Q. Are you what they term the ex-officio chairman?

A. No; I am chairman by the document that sets up the Board, the charter.

Q. Is it a fair statement today, Dr. Aderhold, that you have, in recent years, kept in close touch with the athletic program of the University.

A. Yes, sir.

The Court: Doctor, you will have to speak out a little louder, if you don't mind.

A. (By the witness) Yes, sir.

Q. Do you recall whether or not Wallace Butts came to you on or about January 20 of this year?

A. Yes, sir.

Q. Did he?

A. He did.

Q. Did he at that time—did you have a discussion with him at that time concerning a conference he had had with Mr. Bill Bradshaw a day or two before?

A. I don't believe he referred to any conference, but he called me on Sunday night and asked to come out to see me Sunday night, and I told him that I couldn't see him Sunday night because we had a visitor there and a dinner party, [fol. 1093] but I'd see him early Monday morning; and so he came to the office at 9:30 Monday morning and I saw him at that time.

Q. Was this or not sometime before the Bryant affair came out?

A. Yes, sir; it was.

Q. Now, what happened at that meeting that you had with Coach Butts, or, I should say—he was the athletic director at that time?

A. Let me check the other question, please, sir.

Q. Go ahead.

A. Yes; the date is right; I do recall now. This was before the other matter came up.

Q. What happened at that meeting?

A. Well, he said he wanted to talk with me about a problem or problems that he had; that he should have come to see me earlier or should have talked with some of the Board members earlier, but that he had some problems that he wanted to discuss with me. And he had always felt free to talk with me about his problems when he had them. Essentially that was the beginning of the conference.

Q. Will you state whether or not any particular action was taken at that conference?

A. No; no action. We discussed some possibilities, and I believe that is as far as that went at that time.

Q. Will you give us— Will you give us the extent of that discussion?

A. Well, the discussion involved several problems, as enumerated by him or that came out of our common discussion. Now, do you want me to comment on those?

Q. Just state what—just state what problems he told you he had.

A. Well, I think the first one he told me about, and spent [fol. 1094] a good deal of time talking about, was his financial situation, and that it was serious, and that if anything happened to his job that this financial structure that he had would fall in, I believe were about the words that he used.

Q. Do you recall whether or not, at that meeting, that he resigned?

A. No, sir; he did not. He asked my advice about what he should do, as we talked about some of these problems. This conference lasted about two hours or two and a half.

Q. Dr. Aderhold, have you ever been present at any— well, I will withdraw that question. Will you state to the Court whether or not you know of the general character of Wallace Butts in the community?

A. Phrase your question again; I'm not sure I understood it.

Q. I asked you to state whether or not you knew the general character of Wallace Butts in the community?

A. Well, I would say it's not good.

The Court: That's not the proper way to answer it, Doctor.

By Mr. Cody:

Q. Just say you do or you don't. I will get to that next.

A. I think it's not good.

The Court: That is still not—the question he asked you is, do you know; and then he can ask you any further question.

[fol. 1095] The Witness: Yes; from the contacts I have; I do.

The Court: All right, sir.

By Mr. Cody:

Q. Now, will you state, from that knowledge, whether or not it is good or bad?

A. I'd say it's bad. I would like to make an addition to that.

Q. Make whatever comment you want.

The Court: No, sir; he can't make any addition to it. That's all. The Code section—

Mr. Cody: All right, sir.

By Mr. Cody:

Q. Dr. Aderhold, could you state whether or not you recall hearing Coach Butts make any remarks about the University?

A. At this meeting?

Q. No; I mean at any time. I would say since 1960; I would limit it to some time.

A. Well, I have heard of remarks that he's made. I don't recall—

The Court: That wouldn't be admissible. Have you heard him make any remarks himself, Coach Butts? I presume you mean of the Athletic Association, don't you, or the University?

[fol. 1096]

By Mr. Cody:

Q. Of the University, or the Athletic Board, or the coaching staff?

A. No, sir; I have not.

Q. Have you, as President of the University, and as a member of the Athletic Board, have you had constant contact with Wallace Butts?

A. What do you mean by "constant contact"?

Q. Well, what contact have you had with him? How often would you see him?

A. Well, it depends, I think, on what the situation was. I would say two or three or four times a year on the average, all the years, but it might be in some cases once or twice during the year; other times it might be half a dozen or more times. You mean as it relates to the business—

Q. Right.

A. —of the operation of the Athletic program?

Q. Yes, sir. Did you bring with you, Dr. Aderhold, in response to a subpoena, a letter that you received from Coach Butts while he was athletic director, his letter of resignation?

A. Yes, sir; I did.

Q. Do you mind if I see that? That's the same one, isn't it? Do you mind if I handle your file just a minute? I'll give it back to you.

Mr. Cody: Your Honor, this is the original of a letter which has already been admitted and which has been identified as a defendant's exhibit, but I want to ask him several questions about it.

The Court: All right, sir.

[fol. 1097]

By Mr. Cody:

Q. Dr. Aderhold, it is stated in this letter that Wallace Butts had developed business interests. Do you know—did he tell you what those interests were?

A. Well, he talked about several, and I'm not sure that I could name them all, but a considerable part of the discussion about business related to an orange grove facility or operation in Florida; some about loan companies. I believe those were the two main ones. I know there was something about somebody, or some business at Lakeland, Florida, or Lake City, Florida, I don't remember which. Those were the main ones.

Q. As executive head of the University of Georgia, and as executive head of its athletic program, will you state, Dr. Aderhold, whether or not, in your opinion, these interests prevented him from fulfilling the responsibility that he had as athletic director?

A. Yes, sir; he said so.

Mr. Cody: May I take just a moment, Your Honor?

The Court: Yes, sir.

Mr. Cody: There's a good deal that's been produced.

The Court: In the meantime—Doctor, you may step down just a moment, please, sir. In the meantime, we will take a recess for fifteen minutes.

Members of the jury, I must admonish you, as previously, not to discuss this case among yourselves, or permit anyone [fol. 1098] to discuss it in your presence. Simply dismiss it from your mind during the fifteen-minute recess, at which time you will return to the jury box at 3:00 o'clock. Let the jury pass out; everyone else remain seated.

\ (Whereupon the jury retired from the courtroom at 2:44 p.m.)

The Court: We will recess until three o'clock.

After Recess

The Court: All right; you may go back to the stand, Doctor.

Mr. Cody: Will you identify this for me?

The Clerk: Yes, sir.

Mr. Cody: That really ought to be given the same number as that.

The Clerk: Defendant's Exhibit No. 20 is identified as a copy, and this is the original?

Mr. Cody: Yes, sir.

[fol. 1099] The Clerk: Would you like to make this one—

Mr. Cody: 20.

The Clerk: All right, sir.

The Court: I am informed by the Clerk that one of the letters—I believe it was a copy—

The Clerk: It was this one.

The Court: —has been identified, but had not been introduced.

The Clerk: This is Defendant's Exhibit No. 20.

Mr. Cody: We are substituting the original, giving it the same exhibit number.

The Court: Any objection to the original in lieu of the copy?

Mr. Schroder: Of course not.

The Court: All right, sir.

[fol. 1100] The Clerk: Original letter dated February 23, 1963, to Dr. Aderhold from Wallace Butts.

(Whereupon the document above referred to was marked for identification only as Plaintiff's Exhibit No. 20.)

By Mr. Cody:

Q. Dr. Aderhold, I show you the Defendant's Exhibit No. 20, and ask you if that is the letter that you received from Wallace Butts?

A. Yes, sir.

Q. Do you remember a meeting which occurred on February the 22nd, 1963, in Mr. Cook Barwick's office?

A. There are so many dates, I had better check, I think. Yes; I remember the 22nd.

Q. Do you recall who was present at that meeting?

A. Yes, sir. Those present were Coach Butts, Mr. Bolton, Mr. Hartman, Mr. Dunlap, Mr. Bernie Moore.

Q. Is Mr. Dunlap from Gainesville?

A. Yes, sir; Mr. James Dunlap, Chairman of the Board of Regents, from Gainesville; Chancellor Harmon W. Caldwell, of Atlanta; and Mr. Bernie Moore, of the Southeastern Conference. I believe that is the group that was there.

Q. Will you state to the Court what the purpose of that meeting was?

A. Well, the purpose was to talk with Coach Butts about the information which had come to us, beginning with Mr. Burnett, and had been discussed by several members of this [fol. 1101] same group on two or three occasions prior to this particular date.

Q. Do you know whether or not Coach Butts was made acquainted with the nature of the Burnett story?

A. At this meeting?

Q. Yes, sir.

A. Yes, sir; he was.

Q. How was that meeting handled?

A. Coach Butts came over to Atlanta with Mr. Bolton and me, and I opened the meeting by saying that some information had come to us regarding a proposed telephone conversation, and that Mr. Cook Barwick had directed—handled a study of the report on the situation, and that I would like to turn the meeting over to him for handling; and I did.

Q. Was he a member of the Athletic Board?

A. Yes, sir.

Q. And was he attorney for the Board?

A. Yes, sir. The Executive Committee of the Board asked him to serve as attorney for this study and investigation.

Q. At that meeting, do you know whether or not Coach Butts was shown these notes of Mr. Burnett's?

A. Yes; he was handed the notes.

Q. Can you state to the Court what statement he made, if anything?

A. Well, he looked over them and we talked, I guess, about an hour, and there were many things said. I think he started out by saying that "This is just general football talk," and I think that, as I recall it, that he said, "I guess I talked with him over the phone," or "I probably talked with him over the phone," referring to Coach Bryant, "and I can understand how somebody listening may have made [fol. 1102] these observations, but I want to assure you I had no intention of hurting the University of Georgia, or giving them any information about the University of Georgia athletic team or program."

Q. Did you go into a detailed discussion of some of the items in this note—in these notes?

A. What do you mean by "detailed"?

Q. Well, did you discuss any items that were mentioned in the notes?

A. Well, I couldn't name a specific item, but Coach Butts was talking about various phases of the situation, and actually demonstrating some of the techniques used, and that sort of thing, in coaching.

Q. Did you discuss with him whether or not Coach Bryant called him back on a Sunday night?

The Court: Was it Sunday night, or—

By Mr. Cody:

Q. On the following Sunday, September 16.

A. Yes, sir; I believe—may I look at the notes here?

Q. Yes; you may refresh your recollection from any memoranda that you have.

A. Well, I made these notes some several days after the meeting, and essentially the notes say that more than two

hours was involved in the discussion. Coach Butts devoted a considerable part of that time in the discussion of football, and how coaches discuss games, and so on. He indicated that the call was made, and that these items were probably discussed, but they did not mean what Mr. Burnett had indicated that they did mean.

[fol. 1103] Q. Was there anything said about Coach Butts signing an affidavit?

A. The notes I made on that—may I do a little background on the question?

Q. Go ahead.

A. Mr. Barwick was handling the questioning, and prior to the meeting, or the afternoon before, he indicated that he was going to ask Coach Butts if he would do the two things which Mr. Burnett had done. Now, whether or not he asked for both of these things at that time, I am not clear, for this reason. My notes indicate that he did ask regarding the affidavit and the polygraph test, or lie detector test, at the same time. That is the way my notes indicate, and Coach Butts said, no, he would not. And then there was some discussion about the lie detector test which Coach Butts indicated he would not take. I have not talked with Mr. Barwick specifically about this, but I noted that there was an indication in the Cook report, the Eugene Cook—

The Court: No, sir; we can't go into that.

By Mr. Cody:

Q. Don't go into that.

A. Okay. May I say, Your Honor—can I say—

Q. Make any explanation you want.

The Court: I don't want you to get into the Cook report.

The Witness: I just understood it was possible that Mr. Barwick asked only the one question. If so, if he asked only [fol. 1104] the one question, then it was not to the lie de-

lector test because I know that was discussed, and I think the other was, and I so noted it at that time.

By Mr. Cody:

Q. Dr. Aderhold, as Chairman of the Executive Committee of the Athletic Board, did you authorize Mr. Bill Bradshaw and Mr. Barwick to have a talk with Coach Butts prior to this time, back in early January?

A. This goes back to a meeting of the Executive Committee on January 5, I believe.

Q. 1963?

A. 1963. The Executive Committee met and discussed many of the problems of our athletic program, and reviewed some of the situations, some of the alumni reports and Board member reports, and several rather specific comments were made by Coach Butts, whether or not he was helping or hurting the athletic program, and what was being said, and so on. So, out of that discussion, which lasted from 10:00 o'clock to about 4:00 in the afternoon, with an interruption for lunch, it was decided that somebody should discuss all of these issues with Coach Butts, let him know what the Executive Committee had talked about, the specific terms that we had talked about, and discuss it with him before the meeting of the Board in January—January the 28th, which was up-coming.

And there was some discussion as to who should do that, and the decision was—they requested Mr. Bradshaw, who was there as a member of the Coaching Committee, if he and—I think he was asked if he and Mr. Cook Barwick would sit down and talk with Coach Butts about these issues [fol. 1105] and problems, and get his reaction. So, we did not direct him, but in the discussion he agreed to talk with Mr. Barwick, and I later understand that they did talk with him.

Q. Did you outline to that Committee the area of the discussion to have with Coach Butts?

A. No, sir; I did not outline it, but Mr. Bradshaw was in the meeting during the discussion, and knew what the problems were that we were discussing.

Q. He was the one speaking for the Executive Committee?

A. Well, he and Mr. Barwick.

Q. Barwick?

A. Yes, sir.

Q. Now, did, shortly—did you have your full meeting on February the 28th, your Board meeting?

A. Yes, sir.

Q. Coach Butts there?

A. Yes, sir—you mean January the 28th?

Q. January 28th.

A. Yes, sir.

Q. This was prior to any of the—any knowledge of any Bryant affair; this was January the 28th, I believe you said?

A. Well, at that time I knew about the Bryant thing on the 28th; I knew about it in the sense that the notes had been given to me. I had had a meeting with Mr. Cook Barwick and had gone over the notes with him, in company with Mr. Bolton, but that is—and he said he would begin an investigation, looking into it.

Q. There was no notice of the Bryant affair on the January the 5th meeting?

A. No, sir; or the January 20th.

[fol. 1106] Q. Now, what happened at that meeting on the 28th, January the 28th?

A. Well, several things happened. The minutes of the Board—I have these listed, and I do not have the minutes with me, but if you are referring specifically to Coach Butts, I can—I think I can relate that—

Q. Give us—

A. —about as it is.

Q. Give us the substance of that.

A. I can check it in the minutes. Coach Butts indicated

to the Board that he had become engaged in many business activities which were requiring a great deal of his time, and that he would like to be retired as of June 30th, and retired after that time. He, I believe, did not expand very much on those reasons, but they are in the minutes of the Board, if you want to check those.

Q. Is that the primary problem that you discussed at that meeting his retirement?

A. No; there were—well, I don't know how you class them as primary or secondary; we talked about several matters.

Q. What other problems did you discuss with him at that meeting?

A. With Coach Butts?

Q. With Coach Butts.

A. I think most of the rest could be classified as routine matters, business of the Athletic Board. Maybe I had better check that—I think that's right.

Q. All right; check that.

A. Yes; I think other than just sort of general routine matters that that was all that was discussed at that meeting. There was an Executive Committee meeting following this [fol. 1107] meeting, at which some other matters were discussed which grew out of this question.

Q. Did you attend the Executive Committee meeting?

A. Yes, sir.

Q. What did you discuss with Coach Butts at that meeting?

A. Coach Butts was not at the meeting.

Q. I see.

A. And I—

Q. I wouldn't want—

A. And I think to point—

Mr. Schroder: Just a minute. Mr. Butts was not at that meeting.

The Court: That would not be admissible unless it illustrates another issue, refutes testimony that's been previously given, but I can't see that. I mean, certainly if he wasn't present it would be hearsay.

By Mr. Cody:

Q. Do you recall whether or not there was any discussion at that January 28th meeting as to some of Coach Butts' associations?

Mr. Schroder: What meeting are we talking about? Are we talking about the Executive meeting?

The Court: Are you referring to the Executive meeting? [fol. 1108] Mr. Cody: No, sir; I'm talking about the Board meeting that Coach Butts was present at on January 28th.

The Court: He was present—

Mr. Cody: Yes, sir; he was present. He's already testified about that.

The Court: If he was present, I will let him testify to that.

A. (By the witness) No; there was no discussion that I recall at that meeting.

Q. Prior to the January 28th full Board meeting, did you have any personal discussion with Coach Butts about the up coming meeting?

A. You are referring back to the January 20th meeting when Coach Butts visited me in the office?

Q. Yes, sir.

Mr. Schroder: What game are we talking about?

The Court: January 20th.

Mr. Schroder: I thought he said up-coming game.

Mr. Cody: I didn't say that.

[fol. 1109] The Court: No, sir; he didn't say "game."

By Mr. Cody:

Q. Tell the Court about any personal discussion you had with Coach Butts with reference to the meeting of January 20th, prior, just prior to the January 20th meeting.

Mr. Schroder: May I inquire as to the relevancy of this, Your Honor?

The Court: I don't know, but is that the meeting you have been into, where Coach Butts came to his office on Monday morning?

Mr. Cody: Yes, sir; we have only touched on it. I want to get the substance of that meeting, the full substance of that meeting.

The Court: Between Coach Butts and Dr. Aderhold?

Mr. Cody: Yes, sir; no one else present.

The Court: Sir?

Mr. Cody: No one else present at that meeting.

[fol. 1110] The Court: Yes, sir; I thought you had been into that.

Mr. Cody: Not fully; no, sir.

The Court: I will let you go ahead.

Mr. Schroder: I still inquire as to what the relevancy of it is, Your Honor.

Mr. Cody: We can't tell.

Mr. Schroder: What's all this got to do with it?

The Court: I don't know whether it refutes testimony as to whether he's spoken against the University, or any of that, I can't tell, but I will let him proceed as long as it is relevant; if it is not relevant, I will rule it out.

By Mr. Cody:

Q. Go ahead.

A. Well, there were four or five matters discussed, some of them I believe brought up by Coach Butts, or alluded to by him, and some that I brought up as coming to me from alumni, Board members and others.

Q. I want to know what the substance was.

[fol. 1111] Mr. Schroder: Is this supposed to be in contradiction to something that has already been testified to?

The Court: I assume it is on the question of when he resigned and why he resigned.

Mr. Schroder: I thought we had been through all that on another meeting.

The Court: I don't know whether it is the same meeting. That is what I was making inquiry about.

Mr. Schroder: Let's try to restrict the witness, then, to the area about which he can testify, because I have no idea what he is going into. It may not have any relevance to the case at all. I can't—

The Court: Neither can I and I can't tell until he testifies.

Examination.

By the Court:

Q. Is this the meeting you have discussed that happened on Monday morning following the discussion with Coach Butts on Sunday night?

A. Yes, sir; this is the meeting.

Q. Is it anything different that you testified to concerning prior to the recess?

A. Well, as I recall it, Mr. Cody asked me what was [fol. 1112] the primary matter discussed, and I commented on that as the first item which Coach Butts opened up the discussion with, and that was the matter of his being involved in—

Q. You didn't complete that. You didn't complete what all transpired during the meeting.

A. I didn't know what exactly he meant by "primary" and he didn't ask me any further thing. I didn't know—

The Court: I believe it is relevant as to what the terms of the resignation were.

Mr. Schroder: May I approach the bench with Mr. Cody, Your Honor?

The Court: Yes, sir.

(Whereupon a conference was held at the bench between the Court, Mr. Schroder and Mr. Cody.)

The Court: You may proceed.

By Mr. Cody:

Q. Go ahead, Dr. Aderhold. Just tell us the substance of these other areas of your discussion on that occasion; don't go into any detail.

A. Well, I am sure I will not get them in the order in which we talked about them. One was this financial situation, and I believe that an hour of the time was devoted to that. He told me in great detail or in considerable detail what the financial—what his financial situation was and how precarious it was, and that if the Board were to fire him or if he were to resign, then this whole structure would fall down or crumble down on him. Those are not the exact words, but that was the essence of it. And we talked about that a little and he gave me some figures which I put on a card, and it, to me, looked bad too, and then he went back to his original comment: "What advice would you give me? I came for advice, and what would you advise?" And on this particular thing I said, "Well, Coach, this is completely beyond me; I don't know, this is involved." And I believe we added up, I did, somewhere around seventy-five to a hundred thousand dollars, and he indicated where these notes were, some of them, and what the conditions were involving them, and my recommendation on that, when he came back to it, was that, "Coach, I don't know of anybody that is any better to advise you about these matters than Bill Hartman. He is a man that you have confidence in, and he's a businessman who knows something about these figures." And he said,

"Yes, I know that; I have consulted with Bill some." And my recommendation was that he go talk to Bill about that. Then on the other items, whether—

Mr. Schroder: If the Court please, unless this is related to some resignation, I don't know what the relevancy would be.

Mr. Cody: That is what we are leading up to.
[fol. 1114] The Court: I will let him proceed for a while, Mr. Schroder.

By Mr. Cody:

Q. Don't go into any great detail; just give us the substance of it.

A. Well, the matter of reported criticism of Coach Butts of the athletic situation, we discussed that back and forth, commenting upon the reports that had come to me and come to members of the Board that he was critical of Coach Griffith and the coaching staff and others, and on that particular point I think I emphasized the fact that we had a great deal of criticism about his being critical of Coach Griffith. Well, he then proceeded to say that this was not true, at least he did not mean to criticize the University, the athletic program, or Coach Griffith. Well, that is number two. There was a discussion of some relationships with persons in Atlanta, specifically about—

Q. Don't go into any specific—don't go into that part of it. Any other area?

A. Well, that's all that I can recall, without looking at my notes, and if you would like for me to do it, I will.

Q. Did you or not advise him to resign, Doctor?

A. Toward the end of this, then I had already said, "I think you ought to see Bill Hartman about your financial situation." And he kept referring back to his financial situation in relation to his quitting, and he said, "Now, what about this situation?" And I said, "Well, Coach, I think that the Board is going to take positive action about

this thing, one way or the other. There is so much feeling that our athletic program isn't going, and it is because we [fol. 1115] do not have cooperation and leadership at the head. Whether this is true or not, I don't know, but this is what's being said, and that, as I see it, there are two things that you might do. One is that you might request that the Board give consideration to resigning and retiring at the end of this fiscal year, June 30, but I think the Board is going to take some kind of action, and I don't know what the Board will do with that request." But I assume that Coach Butts thought that maybe that was advisable. At least, then on the 28th, that is what he did, he retired, and—I mean, he asked for retirement, asked to be—resigned on June 30 and retired after that, and gave as the reasons, according to the minutes, his financial—because of the time he was having to devote to outside activities. I think that summarizes it.

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By Mr. Cody:

Q. Dr. Aderhold, I show you the Defendant's Exhibit No. 21, and ask you whether or not that is a letter directed to you, as President of the University of Georgia, from Dr. Frank Rose, President of the University of Alabama.

A. Yes, sir; it is.

Mr. Cody: That's all.

The Court: Any further questions, Mr. Cody, on behalf of Dr. Aderhold?

[fol. 1116] Mr. Cody: No, sir; I have no further questions.

The Court: All right, sir; go ahead.

Cross examination.

By Mr. Schroder:

Q. Dr. Aderhold, you have testified at some length about meetings that were held in Athens by the Athletic Board.

The Court: By the Executive Committee and the Athletic Boards?

The Witness: Yes, sir.

By Mr. Schroder:

Q. At least two of those meetings had to do with certain matters involving Wallace Butts; is that correct, sir?

A. Yes, sir.

Q. The first of which was January 20th?

A. No; January 5th.

Q. All right, sir. There was a meeting on January 20?

A. Well, that was a conference which Coach Butts requested and he and I met.

Q. When was the meeting held after the conference in Atlanta by Mr.—whatever the gentleman's name was?

[fol. 1117] The Court: Bradshaw.

By Mr. Schroder:

Q. —Bradshaw; was that January the 28th?

A. Yes; that's correct.

Q. Sir?

A. Yes, sir; that's correct.

Q. You had an idea that you were going to discuss something with Coach Butts that had been reported to you by some of the alumni; is that right?

A. Which meeting, Mr.—

Q. The meeting on January the 28th.

A. That was a regular Board meeting on January 28.

Q. You planned to, at that time, to discuss with Coach Butts matter that had been raised by some of the alumni previous to the meeting?

A. Yes. He and I discussed them, and I understand that he and Mr. Barwick and Mr. Bradshaw had discussed them.

Q. I thought you said that Mr. Bradshaw was appointed on a committee to talk to Mr. Butts about it before he had the meeting.

The Court: I think, Mr. Schroder, he said January the 5th, that some committee, the Executive Committee met, and they appointed these two gentlemen to meet with Coach Butts on January 20 and report to a full meeting of the Board on January the 28th.

Mr. Schroder: That is the point I am trying to establish.
[fol. 1118] The Witness: Your Honor, that—

The Court: That is correct, isn't it?

The Witness: That was prior to the 20th, that is, their meeting was prior to the 20th. The 20th was the date on which Coach Butts and I talked about—

The Court: Oh, yes. You don't know what date they met with Mr. Bradshaw?

The Witness: I don't believe I do.

Mr. Schroder: Well, the point is quite simple, and I think I can get it over.

By Mr. Schroder:

Q. When you had something to discuss with Coach Butts at a meeting, you usually discussed it with him before the meeting, didn't you?

A. Explain the nature. Sometimes I did and sometimes I didn't.

Q. I know one time you didn't. Now, I want to find out about the times you did. During the month of January when you had in mind discussing with Coach Butts some complaints which you said had come from some of the alumni, you let him know that the matter was going to be discussed at the meeting before the meeting, didn't you, January 28?

[fol. 1119] A. On January 28; yes, sir.

Q. You knew—

A. He and I talked.

Q. You knew what you were going to be talking about when you got to the meeting, didn't you?

A. Yes, sir.

Q. Certainly. On February the 22nd, you had a meeting attended by Coach Butts relating to the Butts-Bryant matter, didn't you, in Atlanta, February 22?

A. I think that's correct.

Q. Yes, sir; that's right.

The Witness: I'm sorry, Your Honor.

The Court: That's all right.

The Witness: I just have the copies here.

The Court: That's all right.

By Mr. Schroder:

Q. Are you confirming the date?

A. I am sure the date is right; if you say it is right, I am sure it is.

Q. There is no doubt in your mind about it being the date, is there?

A. Well, let's check it and see.

Q. All right, sir. I really don't—I am not trying to confuse you.

A. Yes, sir. It was Friday morning, February 22nd.

Q. Did you have any committee appointed to inform [fol. 1120] Coach Butts about what was going to be discussed at that meeting?

A. Well, the group meeting the day before consisting of these gentlemen that I named a few minutes ago suggested that—I mean, we all suggested that we should not talk with Coach Butts about this matter, that it had been pursued up to that point and that we needed to discuss it with him. They asked me if I would call Coach Butts when I got home that night and ask him to come to a meeting the next morning in Cook Barwick's office.

Q. Which you did?

A. Yes, sir.

Q. Did you tell Coach Butts at the time you called him what the meeting was about in Atlanta?

A. No, sir.

Q. Why?

A. Well, he didn't ask, and I just told him that we wanted him in Mr. Cook Barwick's office. I didn't ask him to be there. He asked if he could ride over with me, and I said I was going to come in Mr. Bolton's car and I was sure Mr. Bolton would be glad to have both of us come with him.

Q. Which you did?

A. That's right.

Q. The three of you rode over here from Athens on the morning of February the 22nd?

A. Yes, sir.

Q. Coach Butts, you and Mr. Bolton?

A. That's correct.

Q. You and Mr. Bolton knew what that meeting was to be about, didn't you?

A. Yes, sir.

Q. And Mr. Butts was with you all the way from Athens to Atlanta?

[fol. 1121] A. Yes, sir.

Q. Were you all talking?

A. Yes, sir.

Q. Sir?

A. Yes, sir.

Q. Why didn't you tell him then why you were bringing him to Atlanta?

A. Well, all the discussion about this case after the first meeting had been carried on with these people that I named a while ago present, and I didn't—well, my idea was that we talk about it all together at the meeting.

Q. Wouldn't let him know even what you were going to bring him over here and confront him with. That is a true statement, isn't it?

A. Well, it is a true statement that we had—this group had met with and discussed all of the matters as a group, and my feeling was that that ought to be done the same way, though he did not raise a question and I did not volunteer to open.

Q. Insofar as you know—

The Court: Was this February 22nd, the Athletic Board?

The Witness: No; it was not the Board.

Mr. Schroder: Not the Board; it was the committee that met.

The Court: Is that the one that had Mr. Bernie Moore?
[fol. 1122] Mr. Schroder: That's right.

The Court: Chairman of the Board of Regents?

The Witness: Bernie Moore, Mr. Harman, Mr. James Dunlap, Chancellor Caldwell, Mr. Bolton.

By Mr. Schroder:

Q. You say the same group met every time you discussed it?

A. Well, after the first meeting with Burnett in which Mr. Barwick had a recording of the conference.

Q. Every member of that group met every time when you discussed it?

A. Well, I will have to—I think that's right, but I can check it and see.

Q. How many times did you meet, approximately?

A. Well, met one time with Mr. Burnett. The next time, the addition was Bernie Moore. I think I had better check and get the exact people who were there.

Q. That won't be necessary, sir. My point is, you rode over here with a man who had been connected with the University of Georgia for how many years?

Mr. Cody: Your Honor, he has covered that point, I think he is arguing now, and I move to exclude it.

The Court: I will let him ask him again, did he inform Coach Butts while they were en route or did they wait until they reached Mr. Barwick's office?

[fol. 1123] By Mr. Schroder:

Q. You rode over here in the car with a man that had been head of the athletic department for the University of Georgia for over twenty years, knowing that he was charged with what Burnett had charged him with, didn't you?

A. Yes, sir; to meet with this group.

Q. Yes, sir. So far as you know he didn't know anything about what you all were meeting about, did he?

A. At that time, he didn't; during that discussion he indicated he did know.

Q. And you didn't mention it to him at any time until you got in the meeting; is that right?

A. That's right, until I turned it over to Mr. Barwick for handling.

Q. Up until that time you all had been discussing with him a retirement, hadn't you?

A. Yes, sir. Going back to the 20th, the conference he had with me on the 20th and the subsequent meeting with the Board on the 28th.

Q. That was a month before February 22, at least a month, over a month; during that time you all, the group, had been discussing a retirement under which he would be paid approximately six thousand dollars a year, hadn't you?

A. Well, that figure was named as a possible one—

Q. All right, sir.

A. —but the committee that was asked to look into it was to examine his insurance—I mean, his retirement under the Athletic Board and the retirement under the teacher's retirement, because part of his salary was paid by the University and therefore that part was subject to teacher retirement, and maybe one other item, see what that came to and what would be involved in a retirement [fol. 1124] program that would pay some reasonable amount, and six thousand dollars had been named; yes, sir.

Q. After the Saturday Evening Post story, that was no longer discussed, was it?

A. It has not been discussed directly, though Coach Butts and I discussed it briefly on the date that this letter was written.

Q. The date that Dr. Rose's letter was written?

A. No; I'm sorry, the one that—

Q. The February 23rd letter?

A. Yes; the one that Coach Butts wrote. At that time—
excuse me.

Q. All right. Let's pass on to February the 23rd for a minute. Coach Butts came to your office on February 23rd about noon, didn't he?

A. Well, around 12:00 or 12:30, somewhere along in there.

Q. And he told you that he had heard that there was going to be an article published in that day's paper stating that he was going to resign or that he had resigned?

A. Well, I think I can recall fairly accurately what was said. He indicated that, I believe, Mr. Bisher or some sports editor had—some sports writer had called him either the night before or early that morning saying that such an announcement would be made and that he wanted me to know that he did not authorize that.

Q. And he came to you and he told you, rather than have that come out, without you knowing anything about it, that he had not authorized it, in order not to embarrass you and not to embarrass the University of Georgia he would tender his resignation?

[fol. 1125] A. Well, he didn't give those reasons, but—but he did—

Q. Let's move on to Sunday.

The Court: Go ahead and let him finish. Did you finish your answer?

The Witness: Well, I think the statement of fact is what he said when he came in, and later he did say that he was going to resign. There was no relation, as I remember, in the discussion with the two things.

By Mr. Schroder:

Q. You didn't ask him for his resignation, did you?

A. No, sir.

Q. No one that you know of asked him for his resignation after the February 22 meeting, did they?

A. Not that I know of; no, sir.

Q. As a matter of fact, you were in Birmingham on January the 24th, weren't you—excuse me, February the 24th?

A. Yes, sir; I went to Birmingham the evening of the 23rd, and I was there on the 24th.

Q. And you met with Dr. Rose, didn't you?

A. Yes, sir.

Q. And you told Dr. Rose what had been reported to you by one George Burnett, didn't you?

A. Yes. I think we shared with Dr. Rose all of the information which the committee had, and we shared it not only with Dr. Rose but the group asked Bernie Moore if he would also meet with us, and the meeting was held in his office, so the four of us were there at that time.

[fol. 1126] Q. You speak of all of the information you had, all the information you had was from Burnett, was it not, insofar as it related to this telephone call? Did you have any information from anyone else that was listening?

A. No, sir.

Q. It was all Burnett, wasn't it?

A. It was the Burnett report that we had; that's correct.

Q. All right, sir. And you talked to Dr. Rose in Bernie Moore's office in Birmingham, didn't you?

A. Yes, sir.

Q. Bernie Moore, as a matter of fact, had suggested that that meeting be held in Birmingham in his office and that it be confidential, didn't he?

A. Who did?

Q. Bernie Moore.

A. Bernie Moore? No, sir. I called Dr. Rose while the committee—while this group was up there, and asked him

if he would meet us in Bernie Moore's office. Bernie was in the meeting and agreed that we could meet in his office, and he would meet us.

Q. There was no mention of it being a confidential meeting?

A. Well, I don't recall that there was any mention of it, but—

Q. It was your understanding—

A. I am certain that my concept was that it was to be a confidential meeting at that time.

Q. At which time, insofar as you knew, Dr. Rose would be acquainted for the first time with Burnett's story?

A. As far as I know that is true.

Q. That was the reason for going over there—for having the meeting, wasn't it?

[fol. 1127] A. Yes.

Q. And when the meeting got under way, it was disclosed it really hadn't been confidential as you and the others had expected it to be, wasn't it?

A. Well, I don't know what you mean. If you will elaborate a little I will react to it.

Q. When you walked in and sat down at the meeting, Mr. Moore seemed quite upset because he had been called by a sports writer wanting to know what you all were meeting about, didn't he?

A. Well, during the meeting—I don't recall toward the first; toward the end of the meeting, but I wouldn't be positive about that.

The Court: Who was the fourth man? It was you and Dr. Rose, and—

Mr. Schroder: Bernie Moore.

The Court: Who was the fourth man?

The Witness: Cook Barwick.

The Court: Oh, yes. Thank you.

By Mr. Schroder:

Q. And the man who called Bernie Moore to find out what you were supposed to be meeting about was, again, Mr. Furman Bisher, was it not?

A. May I refer to the notes?

[fol. 1128] Q. Surely.

A. I know, in general, I think, what he reported. I'm sorry; I can't put my hand on it right now, but I think we can nail the dates—

Q. Sir?

A. As I recall it, there were two questions, and I wouldn't say one of these preceded the other at the moment. Dr. Rose, I think, asked if we had heard anything—

Q. I am speaking now about Furman Bisher, not what Dr. Rose said he heard.

Mr. Cody: Let him finish.

Mr. Schroder: I want an answer that is responsive.

The Court: I don't know whether he can respond to it or not.

By Mr. Schroder:

Q. Let me ask him simply, did Dr.—did Bernie Moore say anything about having received a call from Furman Bisher to inquire why the three or four of you all were meeting?

A. Yes, sir. He reported that Furman Bisher called him, I believe, the night before—

Q. All right, sir.

A. —either prior to that or after it, and I wouldn't say which. Dr. Rose asked—do you want to know—

Q. I just wanted to know if it had not been your understanding that it was to be a confidential meeting, and was it not so that a newspaper sports writer did call wanting [fol. 1129] to know why the meeting was being held?

A. No; it wasn't what he—what I remember that he reported. He said that Furman Bisher had called him, and I believe he said the night before—

Q. All right, sir.

A. —and asked some questions that, I think he said, led him to believe that he knew that we were meeting over there.

Q. All right, sir.

A. Now, that is the substance of it.

Q. You went on and had your meeting, and Coach Bryant was apprised of what you had received from George Price Burnett, Jr.?

A. No, sir.

Q. He wasn't?

A. I never did talk to Coach Bryant.

Q. I'm sorry. I made the mistake. The man that was there representing the University of Alabama?

A. Dr. Rose; yes.

Q. And Dr. Rose was told, or he said, well, he was going to look into it himself, didn't he?

A. Yes; he expressed concern, and said that he'd go back and get right on it, that he had to be in Washington, I believe, the first part of the week. He and I both were supposed to attend a meeting in Chicago the latter part of the week, but he said, "I will get somebody started right into it." And I think he mentioned—I know he mentioned two people, one is a fellow, I think he said, Mr. Coleman and Mr. Bennett, "I will get them started on it right away," or something to that effect, "and I will let you know what we find out."

Q. You didn't hear from him again—as you say, he was traveling—until you received the letter which Mr. [fol. 1130] Cody—which you just produced and handed to Mr. Cody?

A. On March 6th; that's correct.

Q. That was the date of the letter?

A. It was dated then. I think I received it about the 8th.

Q. He was, in that letter, reporting on what he had turned up, I mean, reporting on the result of the investigation, sir?

A. Yes, sir.

Q. Did you ever answer the letter?

A. No, sir.

Q. Sir?

A. No, sir.

Q. Why?

A. Well, he said on nearer the end of it that if he found any more information that he would let us know, and our group had agreed to turn over what information we had to the Southeastern Conference, to the NCAA, and to the President of the University of Alabama. We had felt that we had pursued the matter as far as we could.

Q. Well, he told you, did he not, that he found nothing to substantiate what you had told him in Birmingham?

A. Who? President Rose?

Q. President Rose; yes, sir.

A. Well, that is not what is in the letter to me.

Q. You talked to him, though?

A. No; I have not talked with him except the day that this letter was subpoenaed and released.

Q. And he called you on that date?

A. He called me on the phone to ask me if the letter had been released or subpoenaed and released, and I told him, yes, that it had been subpoenaed. I didn't know that it [fol. 1131] had been released, and he said, "Well, it has been." I mean, I didn't know it until really just before I talked to him, because some person from AP or UPI had called from Atlanta and asked one question, "Did you get a letter from President Rose dated the 6th of March?" And he said, "I have seen a copy of the letter." I said, "If you have seen a copy of the letter and it is addressed to me, you can assume I received it."

Q. Yes, sir. But I want to get back—

A. And then—

Q. —to this telephone conversation.

A. Yes, sir. Immediately, then, as I hung up the telephone I had a call from Dr. Rose in Tuscaloosa, and he asked if the letter had been released, and I told him just about what I have said here, and he said, Well, the New York office of the AP had just—had called him and told him about the letter, and that he had made the following comments, none of which I took down, but he said he gave it to AP, and I read it in the story the next day, and it essentially was what he had told me over the telephone.

Q. All right, sir. Now, Dr. Rose told you when he called you on the telephone some two weeks after he had written you that the letter which he had written had been written hurriedly, that it was an attempt by one college president to pass along to another college president information relating to a game which he knew nothing about, and he assumed that you weren't aware or acquainted with the terminology, meaning football?

A. You mean, did he say all that to me?

Q. In essence, isn't that what he told you?

A. I think what he said to me is in the AP report and [fol. 1132] story. I read it the next day, and it was about just what he said.

Q. All right. You tell me what you remember him telling you on the telephone.

A. Well, it was to the effect that he had hurriedly written the letter, that he didn't know much about football, technical football, and that he had talked to Mr. Bryant, I believe he said, two or three times about it, and really that is about what he said on the phone.

Q. And didn't he also, in that conversation with you, tell you that Coach Bryant had told him, when he first approached the matter with Coach Bryant, that Coach Bryant had said that he talked with Wally Butts many times on many topics, including the new enforcement policy regarding defensive tactics in football?

A. He said that in the letter.

Q. Yes, sir; I know it. But didn't he also in the telephone conversation with you, tell you that the reason the University of Alabama, including the Coach and the President, were so concerned about the new enforcement policy was that they wanted to make certain no incident ever happened again to the University of Alabama such as that which happened in the previous football season commonly known as the Darwin Holt-"Chic" Granning incident?

A. I don't believe he said that to me.

Q. In effect, they were very much concerned about the boys playing—not doing anything that might create another incident like that?

A. He said that, I think, in the meeting in Birmingham when we were talking, but I don't recall that he said that at all on the telephone.

[fol. 1133] Q. He told you how that incident alone had harmed the University of Alabama through the press?

A. He didn't comment on it at all, just referred to it.

Q. He told you at that time he didn't want any such incident to occur, particularly between the University of Georgia and the University of Alabama?

A. No, sir.

Q. He didn't talk about the fact that Georgia Tech and Alabama had agreed to sever relations sometime in the future; and he did not want that to arise between the University of Georgia and Alabama?

A. No, sir; I don't recall him saying anything about that.

Q. You remember him talking about the new enforcement procedures that Coach Bryant and he were discussing the night he went back to confront Coach Bryant?

A. In the letter?

Q. Yes, sir. You remember also, do you not, when he talked to you on the telephone, that being a college professor and unfamiliar with football terminology, that he meant, when he was writing to you, to tell you or to acquaint you with the fact that it was those defense tech-

niques that he was concerned with, and that is why Coach Bryant and Coach Butts had these conversations, and that if he used "plays" in his letter, it was just one college professor's way of saying "techniques"?

By Mr. Schroder:

Q. Now, he told you that on the telephone, didn't he?
[fol. 1134] A. He told me that he meant "techniques". The rest of it I don't recall much about, except what the AP reported the next day was essentially what he had told me on the phone.

Q. All right, sir. He pointed out to you where he had used the word "plays". He didn't understand it; it was a defensive technique he was trying to describe to you in his letter, and he told you what plays were used, I mean, techniques?

The Court: Haven't you been over that once?

Mr. Schroder: I don't know, sir. I don't want there to be any doubt.

The Witness: There are other—

The Court: I don't think we can keep repeating it.

The Witness: He referred to it in other parts of the letter.

By Mr. Schroder:

Q. During that conversation he also asked, didn't he, why you hadn't answered his letter?

A. No, sir.

Q. Did he mention anything about you answering his letter?

A. No, sir; he did not.

Q. All right, sir. You are positive?

A. Yes.

Q. Sir?

[fol. 1135] A. Yes. I don't think he has ever asked me why I didn't answer his letter.

Q. All right. You have already said, I believe, he asked you, did you release the letter?

A. He asked me, "Was the letter released?" And I said, "It was subpoenaed; I did not release it to anybody."

Q. He told you he considered that to be a confidential communication because it had been so marked, didn't he?

A. He did not say that.

Q. What did he say about it being confidential?

A. He said, "This letter which I wrote you, has it been released?" And I said, "It's been subpoenaed, and I just learned from a telephone conversation a minute ago that it apparently has been released."

Q. Did he say anything—it is marked "Confidential", isn't it?

A. Yes, sir.

Q. Did he say anything to you—did he use that word in the telephone conversation?

A. Well, I don't remember that he did.

Q. Did he also tell you that he felt that you owed him the courtesy of letting him know that it had been subpoenaed?

A. No, sir.

Q. He didn't discuss that with you?

A. No, sir.

Q. You are sure?

A. I am.

Q. Sir?

A. Yes, sir; I am.

Q. Is there any question in your mind, or has there ever been any question in your mind when Dr. Rose told you that the unfortunate use of the word "plays" instead of [fol. 1136] "techniques", has there never been any question in your mind that he meant it?

The Court: How many more times are we going to go over "plays" and "techniques"? You don't have to answer that, Dr. Aderhold.

Mr. Schroder: I want to know if there is any doubt about him having meant it.

The Court: I think he has answered it three times, Mr. Schroder.

Mr. Schroder: I have not asked for his reaction, Your Honor.

The Court: I think you have asked him the question three times.

Mr. Schroder: May I—I will cut it out if I can ask him this one more question.

The Court: No, sir; you have asked him that three times—the same question.

Mr. Schroder: No. I asked him—I am asking him now, is there any doubt in his mind about President Rose meaning what he said.

[fol. 1137] The Court: I told you, you have asked the question three times.

Mr. Schroder: I have asked that?

The Court: Yes, sir.

Mr. Cody: I don't see how any witness, Your Honor, could testify with any accuracy about somebody's mental reaction.

The Court: I have already ruled on it. Let him proceed.

The Marshal: Let's have order, please.

By Mr. Schroder:

Q. I believe you testified on direct examination that you would see Coach Butts maybe two, three or four times a year?

A. Oh, I saw him, of course, many more times than that.

Q. I don't mean on the street; I mean in connection with his position there as athletic director.

A. Well, I haven't kept any record, but I would guess that is within the range of our meetings.

Q. In the meeting of February 22nd, when you finally acquainted Coach Butts with what he was over there for, did you say that the notes were handed to him and he rifled through them, or what did you say?

[fol. 1138]: A. I didn't say "rifled through them."

Q. I didn't mean to put that in your mind—in your mouth. Just tell me what he did do. Did he have his glasses on?

A. They were handed to him. He said he didn't have his glasses, I believe, and somebody—I don't remember whether it was Mr. Barwick or Mr. Bolton—said, "Try mine," and handed them to him, and he said, "Yes; I can see."

Q. All right, sir. How long did he spend with the notes?

A. Well, I don't recall it consumed very many minutes; just briefly looked through them.

Q. Just what, sir?

A. I don't recall it—

Q. I didn't hear the last thing you said.

A. —consumed very many minutes.

Q. You said it didn't consume very many minutes; you'd say briefly?

A. I would say briefly, a few minutes; I don't know whether three or five.

Q. And I don't believe you said that any particular item in those notes was discussed by him when he was going through them?

A. What do you mean by "specific items" now?

Q. Well, to me that would mean there were several entries in the notes, and were they gone over one by one, entry by entry, or was any particular entry discussed?

A. I don't believe so.

Q. All right, sir.

A. I think he—I think he generalized about them rather than any specific one.

Q. And he then proceeded, I think you testified on direct [fol. 1139] examination he then proceeded to discuss football in general at the meeting, including you?

A. What do you mean "including me"?

Q. I mean, including you as a group, he was discussing football there for about an hour, I think you said?

A. Well, I wouldn't put an hour on it, but approximately that; yes.

Q. All right, sir. And he took the position, as you said, that the information that was contained in these Burnett notes were not in the category that they would have helped anyone getting ready for a game with the University of Georgia?

A. Well, I don't believe he was asked that question.

Q. Let me put it this way. You did testify he told you and the others he would never do anything that would hurt the University of Georgia, didn't he?

A. He said, "I didn't do anything that I thought would hurt the University of Georgia and I never would," or something to that effect.

Q. All right, sir. These notes that he had there in his hand, if they contained information that might have helped an opposing coach, that would have hurt the University of Georgia, wouldn't it?

A. Well, presumably so.

Q. You don't know what is in those notes insofar as football knowledge is concerned, do you?

A. No; I do not.

Q. You don't know whether there was anything in those notes that would be helpful or harmless, do you?

A. This is certainly not an expert's reaction, but there were names called, and whether or not that is helpful and how they react, or not, I have an idea that maybe if [fol. 1140] you knew a good deal about the reaction that it would be helpful.

Q. Did you ever discuss these notes yourself with anyone that was familiar with football jargon?

A. I saw a run of the film—

Q. Yes, sir.

A. —with the notes.

Q. Yes, sir. Did you discuss the notes with someone when the film was being run?

A. Yes. I mean, the notes were discussed.

Q. Yes, sir.

A. I listened.

Q. The film was being run by Johnny Griffith, wasn't it?

A. Yes, sir.

By Mr. Schroder:

Q. Did Coach Griffith tell you, in effect, that the only thing that he saw in those notes that would be of help would be knowing two formations?

Q. Did he at that time point out to you—

A. I think he indicated that he thought they would be of help.

Q. All right, sir.

A. But I don't think he mentioned specific formations.

Q. Did he, at the time that he was showing the film to you, point out that the first four times that the University of Georgia football team used one of these formations that it caught Alabama by surprise and the plays run from those formations were successful?

[fol. 1141] A. I don't think there is any—

The Court: I don't remember Coach Griffith testifying to that. Several others testified to that.

Mr. Schroder: Mr. Pearce did.

Mr. Cody: He didn't testify to that.

The Court: No.

Mr. Joiner: No.

DR. HUGH MILLS, called as a witness on behalf of the Defendant, after having been first duly sworn, testified as follows:

By Mr. Cody:

Q. Your name is Dr. Hugo Mills?

A. Yes, sir.

Q. Where do you live, Dr. Mills?

A. In Athens, Georgia, 3280 Jefferson Road.

Q. How long have you lived there?

A. I have lived at this address about three years now.

Q. How long have you lived in Athens?

A. At this present time since 1954, I believe.

[fol. 1142] Q. Are you connected in any way with the University of Georgia?

A. Yes; I am an associate professor in the Education School.

Q. How long have you been a professor?

A. I first joined the staff in 1948, I believe, and then I had a three-year term back out in public school and back the next time I believe in 1954, so I have actually had two tenures with the University. I have been there since 1954 constantly.

Q. Are you a member of the University of Georgia Athletic Board?

A. Yes, sir.

Q. How long have you occupied that position?

A. I am in my second term. The term is for one year, so it would be about a year and a half, I guess, now.

Q. In your work at the University, have you—have you had occasion to know Wallace Butts?

A. Yes, sir.

Q. Please state to the Court, Dr. Mills, whether or not you know the general character in the community of Wallace Butts?

A. Yes, sir; I think I know the general character of Wallace Butts.

Q. From that knowledge will you state to the Court whether or not that is good or bad?

A. Given those choices, from my knowledge I would now have to say "bad".

Q. From your knowledge of that character can you state to the Court whether or not you would believe Wallace Butts on oath?

A. I would not any longer.

[fol. 1143] Mr. Cody: I believe that's all.

The Court: Mr. Schroder—

Mr. Schroder: Yes, Your Honor.

The Court: —Do you have any questions?

Cross examination.

By Mr. Schroder:

Q. Dr. Mills, after the January 28th meeting of the Board—you attended that meeting, didn't you?

A. Yes, sir.

Q. And after the meeting you talked with Wallace Butts, didn't you?

A. Yes, sir.

Q. And in that conversation you told him what a wonderful job you thought he had done there at the University, didn't you?

A. Yes, sir.

Mr. Cody: Speak so I can hear you, Schroder; I can't hear you.

The Witness: And will be happy to explain that statement.

By Mr. Schroder:

Q. Well, you made the statement to him?

[fol. 1144] A. Yes; I did.

Q. All right, sir. Do you know Bill Hartman?

A. Yes, sir.

Mr. Cody: I think he ought to be permitted to explain his statement, Your Honor. I think you permitted Mr. Schroder's witnesses to do that, and if he wants to make an explanation I think he ought to be permitted to do it.

Mr. Schroder: I understand Mr. Cody is not through, yet, with the witness.

The Court: Sir?

Mr. Schroder: I didn't understand Mr. Cody was through with the witness.

The Court: Mr. Schroder, I think he can explain his answer.

Mr. Schroder: It is all right with me.

The Court: You can explain it, sir.

The Witness: As well as I remember in these circumstances we were viewing the maps of the proposed recreation experiment stations in North Georgia where we were [fol. 1145] in Mr. Masters' office at the Continuing Education Center, and I told Coach, because I felt that things had gone very badly for him, not in the meeting but of late, that all in all I felt he had had a very good influence over the years, which was my way of saying, in fact, that, "I am very sorry and I hope things do better for you now, and I certainly did mean that, of course."

By Mr. Schroder:

Q. In 1959 Wallace Butts was elected the number two football coach in the United States, wasn't he?

A. I'm sorry, but I don't recall.

Q. You say you do know Bill Hartman?

A. Yes, sir.

Q. He is a man of honor?

A. In my estimation, yes, sir.

Q. You would believe him, wouldn't you?

A. I would.

Q. Do you know Ray Clark, the captain of the Georgia 1962 football team?

A. Yes, sir.

Mr. Cody: Your Honor, I think it is the character of the Plaintiff in this case, not that of—not that of other parties.

Mr. Schroder: These people have testified—

The Court: I think, Mr. Cody, if I remember the rule correctly, I don't know that Mr. Schroder is properly putting the questions, but I am sure he can, I think he can [fol. 1146] ask him to say he knows So-and-So. I think he can bolster the evidence of Mr. Hartman or Mr. Clark, or anyone else.

Mr. Cody: Very well; very well.

The Court: It is a proper rule. I don't know that you propounded your question like the Code Section; but you can ask him does he know the reputation of Mr. Hartman.

Mr. Schroder: All right, sir.

By Mr. Schroder:

Q. And Mr. Ray Clark?

Mr. Cody: I do want to make this point for the record, Your Honor.

The Court: All right, sir.

Mr. Cody: Until the character of a witness is in issue, I think the Courts have held that evidence as to character is inadmissible.

The Court: All right, sir; have you got the law on that? Let the Jury go to the jury room. Let's see the law on that.

[fol. 1147] (Whereupon the Jury retired from the courtroom at 10:12 A. M.)

Mr. Cody: 16 Georgia Appeals, Your Honor.

The Court: Let me get 16 Georgia Appeals. Will you state what that case holds, and by that time I will have the volume.

Mr. Cody: It is my understanding that it was held in that case that the credibility of a witness—it is my understanding that the witness can not be impeached on evidence introduced as to his character unless there's been some attack on it.

The Court: Well, I don't know whether you would call an attack—one way to impeach a witness would be contradictory testimony.

Mr. Cody: Yes, sir.

The Court: And some of the witnesses would be questioned about, Mr. Clark and Mr. Hartman, there's been contradictory testimony in regard to whether or not plays set out in those notes would have or would not have been beneficial.

Mr. Cody: Yes.

[fol. 1148] The Court: That is one way of contradicting it, I mean, impeaching is by contradicting statements.

Mr. Cody: Let me take a look at one Code section we had in mind.

The Court: You are referring, I believe, to 38-108?

Mr. Cody: I think it is.

The Court: Yes, sir. This testimony went in yesterday, Mr. Cody, without objection on your part. I remember he asked Mr. Bradshaw in regard to Charlie Trippi; I believe I am right on that.

Mr. Schroder: That's correct.

The Court: What is your citation?

Mr. Cody: It is 1803.

The Court: Sir?

Mr. Cody: Code section 1803.

[fol. 1149] The Court: What is your citation in 16 Georgia Appeals? I have it here now.

Mr. Cody: Page 832, headnote one. I think Section 1804 touches on this subject too.

The Court: Have you got any Code section?

Mr. Cody: Yes, sir.

The Court: As I understand the Code section, Mr. Cody, —I am reading from the Code section, a witness may be impeached by evidence as to his general bad character. The impeaching witness should be first asked as to his knowledge of the general character of the witness, and next as to what that character is, and lastly he may ask from that character if he would believe him on his oath. The witness may be sustained by similar proof of character. And that is just what—

Mr. Cody: That is the witness on the stand. A witness—

The Court: No, sir; you wouldn't sustain a witness by his own testimony. You would sustain it by someone else, and he is sustaining Mr. Hartman's and Mr. Clark's, I believe, by this witness.

[fol. 1150] Mr. Cody: Only, I understand, when his character has been attacked. You can not offer evidence—

The Court: I don't know that you have attacked his character, but you have in a roundabout way, I assume it is your contention, that this evidence showed that these notes

were of benefit, and these two witnesses testified—I don't remember about Mr. Clark, but I remember Mr. Hartman stated that in his opinion and Mr. Trippi, that they didn't affect the outcome.

Mr. Cody: I understand Your Honor's ruling.

The Court: Yes. I will let him answer. Is there anything else while the Jury is out?

Mr. Schroder: No, Your Honor.

Mr. Cody: No, sir.

The Court: All right, let them be brought back in.

(Whereupon the Jury returned to the courtroom at 10:18 A. M.)

The Court: All right, Mr. Schroder.

[fol. 1151]

By Mr. Schroder:

Q. Dr. Mills, you stated that you do know Mr. Ray Clark?

A. Yes, sir.

Q. You are familiar with his reputation in the community?

A. I am not real familiar with his reputation in the community. I do know him and have a high regard for the boy; yes, sir.

Q. Do you know Mickey Babb?

A. Yes, sir.

Q. Do you know his reputation in the community?

A. Yes, sir.

Q. Would you believe him under oath?

A. I would.

Q. Do you know Wally Williamson?

A. Yes, sir.

Q. Do you know his reputation in the community?

A. Yes, sir.

Q. Is it good or bad?

A. Good.

Q. Would you believe him under oath?

A. I would.

Q. Do you know Mr. Charlie Trippi?

A. Yes, sir.

Q. Do you know his reputation in the community?

A. Yes, sir.

Q. Is it good or bad?

A. Good.

Q. You would believe him under oath, wouldn't you?

A. I would.

Q. Did I ask you about Mr. Brigham Woodward?

A. No, sir; I don't believe you did.

[fol. 1152] Q. Do you know his reputation?

A. I do not know it as well as the others. I have talked to the others personally on occasion. I don't believe I have ever talked to Mr. Woodward personally, but I do know who he is, and I know him as one of our students.

Q. You know his reputation?

A. To that extent, yes.

Q. Is it good or bad?

A. Good.

Q. You would believe him under oath, wouldn't you?

A. I would.

• • • • •

J. D. BOLTON, having resumed the stand, testified further as follows:

Redirect examination.

By Mr. Cody:

Q. Mr. Bolton, you heretofore have been sworn as a witness?

A. Yes; I have.

Mr. Cody: This is Mr. J. D. Bolton.

By Mr. Cody:

Q. Mr. Bolton, will you tell the Court once again how long you have been connected with the University.

A. Since July 1st, 1933.

[fol. 1153] Q. And you presently occupy what position?

A. Comptroller and Treasurer of the University of Georgia, and also Treasurer of University of Georgia Athletic Association.

Q. In that capacity have you had much contact with Wallace Butts during the period that he has been at the University?

A. Yes, sir.

Q. Has that been fairly constant?

A. Yes, sir.

Q. Does your duties as Treasurer of the Athletic Association cause you to have business dealings with him?

A. Yes, sir.

Q. Will you please state to the Court whether or not you know—you are acquainted with the general character of Wallace Butts in the community?

A. Yes, sir; I believe I am.

Q. From that knowledge will you state to the Court whether or not that is good or bad?

A. I would have to say it is bad.

Q. From that knowledge of his character, would you believe him on his oath?

A. No, sir; I would not.

Q. Mr. Bolton, have you ever talked with Wallace Butts or been at any meetings where Coach Bryant was discussed, or whether he mentioned Coach Bryant's name?

A. This meeting in Cook Barwick's office on February 22nd, I believe it was.

Q. By what name did he refer—did he refer to Coach Bryant at that time.

A. This is February 22nd, 1963. At that time, to the best of my recollection, he referred to him as "Old Bear" in that one instance.

[fol. 1154] Q. Do you remember at that meeting whether or not Wallace Butts had his glasses with him?

A. Yes, sir; I can remember very distinctly.

Q. Did he have them or did he not?

A. Evidently he did not have them, because I gave him my glasses to examine the notes with.

Q. Did he have anything to say as to whether or not he could see with your glasses?

A. Yes, sir; he said, "I can see out of these things."

Q. Did he examine the notes in your presence?

A. Yes, sir.

Q. Mr. Bolton, were you—prior to the Bryant affair, were you on a committee appointed by Dr. Aderhold to look into any matters concerning Wallace Butts?

A. Yes, sir.

Q. Do you know when you were appointed on that committee?

Would your notes refresh your recollection?

A. I think it was January the 5th.

Q. Of 1963?

A. 1963.

Q. What is that you are looking at?

A. Looking at the minutes of the Athletic Association.

Q. Go ahead.

A. Minutes of the Board meetings and Executive Committee meetings.

The Court: You the secretary?

The Witness: No, sir. I have sometimes acted as secretary when others were not there.

[fol. 1155] By Mr. Cody:

Q. Will you state to the Court the assignment that was given that committee?

A. The committee was instructed, and, as well as I remember, the committee was composed of Mr. Heckman and Mr. Bishop Grant and I, to study expense accounts and personal telephone accounts of Coach Butts.

Q. Well, how did the University come into that—

Mr. Lockerman: Your Honor, I don't see the relevancy of this at all, and I think the Jury should be instructed to disregard it.

The Court: Let's don't go into that. I will let you ask him in regard to the termination, what that committee—I

presume you are going up to the question of the appointment of Mr. Barwick to investigate it?

Mr. Cody: That is another committee.

The Court: Sir?

Mr. Cody: That is another committee.

The Court: Well, I will rule this evidence out.

Mr. Cody: Yes, sir.

[fol. 1156] Mr. Lockerman: Will you instruct the Jury?

The Court: Members of the Jury, I will instruct you to disregard any statement in regard to the committee looking into any telephone calls that might have been charged to the University. That is not relevant in this matter, and you should disregard it.

Mr. Cody: I believe that's all.

Recross examination.

By Mr. Schroder:

Q. You referred a moment ago to a notebook that you had there covering the meeting in Mr. Barwick's office. Could I see it please, sir?

A. My notebook?

Q. Yes, sir.

The Court: I don't believe he—his testimony wasn't that he had evidence of minutes of the meeting in Mr. Barwick's office.

Mr. Schroder: No; when he was testifying, refreshing his recollection.

The Witness: Do I have to give him my personal notebook?

[fol. 1157] Mr. Schroder: You mentioned something—I don't want to look at your personal notebook.

The Court: He thought maybe you had some notes. Do you have any notes that were made in regard to that meeting that are separate? He would be permitted to have them. But if it is your personal notes—

Mr. Schroder: Could I sort of stand behind him and let him show me what entries he had?

The Court: Let him read them out to you and then point them out.

The Witness: Which date, February 22?

Mr. Schroder: Yes, sir.

The Witness: 10:00 A.M., Cook Barwick, Caldwell, Dunlap, Moore, Hartman, Butts, and, of course, Dr. Aderhold and I were there too.

By Mr. Schroder:

Q. Is that all the notes you have relative to that meeting?

A. Yes, sir.

Q. Well, when you were asked a minute ago about what Coach Butts had to say when he was referring to Coach [fol. 1158] Bryant, you looked at your notebook and said, "Old Bear". You don't have that in there, do you?

A. No; I looked for the date in the notebook.

Q. Oh, looking at the date refreshed your recollection?

A. Yes, sir.

Q. You been at Athens, you say, since 1933 at the University?

A. Yes, sir.

Q. You were there when I went through the Law School?

A. Yes, sir; I remember you well.

Q. You have been there long enough, have you not, to form an opinion as to the general character and reputation of William Hartman in that community?

A. I think so.

Q. In your opinion, is it good or is it bad?

A. I would say it is good.

Q. Would you believe him under oath?

A. I have never had occasion not to.

Q. Is your answer "yes"?

A. I believe I would.

Q. Your answer is "yes"?

A. Yes.

Q. Do you know Coach Charles Trippi?

A. Yes, sir.

Q. He lives in Athens?

A. Yes, sir.

Q. Are you familiar with his character and reputation in the community where he lives?

A. Not as well as I am with Coach Hartman. I have never been thrown closely with Coach Trippi.

Q. No; I didn't mean your personal association with him, [fol. 1159] but what is his general reputation in the community in which he lives?

A. As far as I know it would be good.

Q. And you would believe him under oath?

A. Yes, sir; I would.

Q. Do you know Ray Clark, Captain of the University of Georgia football team?

A. I would know him if I were to see him.

Q. Sir?

A. I would only know him if I were to see him.

Q. Are you familiar with his reputation in the community?

A. No, sir; I would not be.

Q. Sir?

A. I would not be.

Q. And he is the Captain of the team?

A. I think he was.

Q. In '62?

A. Yes, sir.

Q. But the last time we put a team on the field he was the Captain of it, wasn't he?

A. I think that's right.

Q. Do you know Mickey Babb?

A. I think I'd know him if I were to see him.

Q. Do you know his reputation?

A. No, sir.

Q. Do you know Wally Williamson?

A. I'd know him if I were to see him.

Q. Do you know his reputation in the community?

A. No, sir.

Q. Do you know Brigham Woodward?

A. Same answer. I'd know him when I'd see him.

Q. But you don't know anything about his reputation?
[fol. 1160] A. No, sir.

Q. Do you know John Gregory?

A. Yes, sir.

Q. You know his reputation in the community?

A. Yes, sir.

Q. Is it good or bad?

A. I think it is good.

Q. Would you believe him under oath?

A. I don't believe I could answer that question.

Q. Why not?

A. May I explain?

Q. Yes, sir.

A. I think the answer would have been yes immediately, but if the newspapers have reported him right, I could not answer the question you asked without studying it further, and I haven't seen the evidence myself.

Mr. Schroder: All right, sir. That's all—

By Mr. Schroder:

Q. Going back to the topic I was questioning you about at the beginning of this examination, I have in my hand a transcript prepared by the Court Reporter here of your testimony when you were on the stand last week. This question—I ask you if you remember this question being asked you by Mr. Cody: "Could you recall for the Jury what comments he did make," referring to Wallace Butts? Answer by Mr. Bolton: It got down—"It's just conversation, ordinary football talk among coaches, and that you know I would not give Old Bryant anything to help him and hurt Georgia, and I wouldn't do anything to hurt Georgia." Do you remember giving that answer?

[fol. 1161] A. No, sir; I remember saying "Old Bear".

Q. Last week?

A. Yes, sir.

Q. Since you were last on the stand, has Mr. Cody or anyone from this office discussed the testimony in this case with you since then?

A. Yes, sir.

Mr. Schroder: All right, sir, come down.

Examination.

By the Court:

Q. Mr. Bolton, let me ask this question. I believe there are about, what, thirteen or nineteen members on the Athletic Board?

A. Eighteen, I believe.

Q. Eighteen, and two of those, I believe, are appointed by the Alumni Association, which is a separate—I believe the Alumni Association is a separate corporate entity, is it not?

A. That's correct.

Q. Is the Athletic Association a corporation, do you know?

A. Yes; it is a corporation.

Q. It is a corporation?

A. Yes, sir.

Q. What—the charter of the corporation, what is the provision as to the election of members to the Athletic Board?

A. If I remember correctly, Your Honor, I think the President appoints the faculty members or suggests to the committee who appoints the faculty members, and then [fol. 1162] the Board elects the non-faculty members every year; they are re-elected.

Q. You mean the non-faculty members of the Board—

A. Yes, sir.

Q. —are elected by the faculty members of the Board; is that correct?

A. I think that's right.

Q. Except for the two alumni?

A. I think except for the alumni, and you see—let's see, fifteen, there are eight faculty members and seven non-faculty members, and I think under the—

Q. The Southeastern Conference requires that the majority members of the Board be faculty members?

A. That's correct, sir.

Q. But under the charter the faculty members elect the non-faculty members; is that right?

A. I can tell you how it is handled. We have a nominating committee that is usually made up of a majority of the non-faculty members, and there will be a faculty member on there, but the majority is made up of non-faculty.

Q. Non-faculty?

A. To nominate non-faculty members each year at the Board meeting.

Q. Does this Board decide what the compensation the Director of Athletics and coaches and all assistant coaches should be?

A. Yes, sir.

Q. What was the compensation—what is the compensation of the Director of Athletics?

A. At the time Coach Butts was made Director, I believe it was twelve thousand.

Q. What is the compensation of the head coach at Georgia?

[fol. 1163] A. I believe Coach Griffith's was set at fifteen thousand. At the time of Coach Butts, I believe, if my memory serves me correctly, it was eighteen-five. That included some—not only salary but subsistence allowance.

Q. And you are a separate corporation, the Athletic Association?

A. Yes, sir.

Q. I presume that all your accounts and so forth are not only audited by the University but audited by the State of Georgia too?

A. No, sir; they used to be, but since 19—I can't remember the exact date, but 1948 or '49, although the Athletic Association was incorporated, there was a State Act of

the Legislature declaring the University of Georgia Athletic Association and the Georgia Tech Athletic Association as separate corporations, and—which did not come under the State. Therefore, the State auditor has not audited since that date.

The Court: I believe that's all.

Redirect examination.

By Mr. Cody:

Q. Mr. Bolton, when the question arose as to what your testimony was last week as to what name Coach Butts used when he referred to Coach Bryant, did the Court Reporter call you?

A. No, sir.

Q. It is your testimony that in that meeting he referred to Coach Bryant as "Old Bear"?

A. That is my understanding; that is my memory of it. [fol. 1164] Q. And that is what you testified to last week?

A. Yes, sir.

Mr. Cody: I believe that's all.

The Court: Any further—any further questions?

Recross examination.

By Mr. Schroder:

Q. During the time Wallace Butts has been connected with the football picture there at the University, during all of which you were at the University, tell the Court and Jury approximately how much revenue the University has picked up through his football teams?

The Court: I don't think that is relevant, Mr. Schroder. I was simply—probably my evidence was irrelevant. I was simply trying to bring out the full picture, what the Athletic Board was, but we can't go into

Mr. Schroder: I will go back to one of the questions Your Honor asked, and the answer he gave.

The Court: I didn't mean to get into a different field. I was simply making an inquiry for personal information. I did want to know the whole athletic situation. I thought it was pertinent on that.

[fol. 1165] Mr. Schroder: I was glad to find that out myself. I thought the amount of salary paid was pertinent.

By Mr. Schroder:

Q. The amount of salary paid Coach Butts as athletic director was twelve thousand dollars by the Board, wasn't it?

A. Yes, sir; that was his beginning salary.

Q. I mean, as athletic director.

A. Yes; as athletic director.

Q. But he did receive the same amount of money as he had when he was head coach, which would be eighteen-five, didn't he?

A. He did—you mean after he became athletic director? No, sir.

Q. G.S.E.F. didn't pay sixty-five hundred a year?

A. I don't know about that.

Q. You don't know what the Georgia Student Educational Fund is?

A. I know what it is, but I have no knowledge of their records.

Q. You don't know that he got from the University sources the same amount as athletic director that he did as head coach?

A. No, sir.

FRANK SCOPY called as a witness on behalf of the Defendant, after having first been duly sworn, testified by deposition as follows:

[fol. 1166] Direct examination.

By Mr. Joiner:

Q. Will you state your name, please?

A. Frank Scoby, S-c-o-b-y.

Q. What is your residence address?

A. 6141 North Lemont Avenue.

Q. And is that in Chicago, Illinois?

A. Chicago, Illinois.

Q. What is your primary business address?

A. 315 North May, M-a-y. This is Chicago, Illinois.

Q. Do you have any other business addresses, other than that one?

A. No.

Q. What is your home telephone number?

A. Mulberry 5-6662.

Q. And do you have more than one telephone number at home?

A. No.

Q. Would you give us those of your business telephone numbers that you can recall by memory?

A. CHesapeake 3-0800.

Q. Do you remember any of the others?

A. No.

Q. What business are you in, Mr. Scoby?

A. Beer distributing.

Q. And what is the name of your business?

A. Better Brands of Illinois, Incorporated.

Q. What brands of beers do you distribute?

A. Miller High Life.

Q. Any other brands?

A. Ballentine Ale and Amstel.

Q. Do you also distribute distilled beverages?

A. No.

[fol. 1167] Q. Have you, in the last few years, distributed any distilled beverages?

A. No.

Q. Do you now, or have you over a period of the last five years, distributed any alcoholic beverages, except for malt beverages?

A. No, not in five years.

Q. You had some time previous?

A. About eight years ago I had a Scotch, yes.

Q. What brand of Scotch was that?

A. Lean Gramey.

Q. Do you have any interest in the Red Top Brewing Company of Cincinnati, Ohio?

A. Do I have?

Q. Yes.

A. No.

Q. Have you previously had an interest in this company?

A. I operated the company for John MacArthur, an insurance man, for a period of about three years, two years, before we liquidated it.

Q. When was it liquidated?

A. Approximately six years ago. Five or six years ago.

Q. How long have you been in business in the Chicago area?

A. Since 1945.

Q. How long have you lived in the Chicago area, since that time?

A. Since about that time.

Q. Where were you from, originally?

A. Previous to that I was in Detroit, Michigan.

Q. Is that your home?

A. No. My home is Colorado Springs.

Q. Do you know Wallace Butts.

[fol. 1168] A. Yes, sir.

Q. When did you meet Wallace Butts?

A. Oh, about fifteen years ago, I believe. In 1947 or '48.

Q. What were the circumstances under which you met Wallace Butts?

A. It was the time Frank Lahey was coaching the All-Stars and Wallace Butts was on the staff. I met him through Frank Lahey.

Q. Do you remember the year?

A. I believe it was 1947. I am not positive.

Q. How long have you known Coach Frank Lahey?

A. At that time about three years.

Q. Have you seen Coach Butts frequently since the time you first met him?

A. Quite often.

Q. Could you say about how many times each year since then?

A. Some years it may have been two or three. Other years it might have been eight or ten, depending on the situations, whether he was in town or not.

Q. Have you seen him at least once each year since you met him in 1947?

A. Yes, I would say so.

Q. And would you give us your best recollection of what would be the most number of times that you have seen him during this period of any one year?

A. In any one year?

Q. Yes.

A. Seven or eight, possibly ten.

Q. Do you recall now what year that would be?

A. No, not in particular.

Q. Now, to the best of your recollection how many times have you seen Coach Butts over a period of the last three years?

[fol. 1169] A. Possibly fifteen times.

Q. And of those fifteen times, how many of them would have been within the immediate preceding year?

A. Six or seven, I'd say.

Q. Now, during these times that you have seen Coach Butts, where would you usually see him?

A. Normally it would be, because he would just be in town and call me up and I'd meet him.

Q. What places, other than Chicago, have you been with Coach Butts?

A. I was with him once in Atlanta and once in Miami.

Q. Have you ever been to Athens?

A. Never.

Q. Now, I suppose you have been to South Bend?

A. Quite often.

Q. With Coach Butts?

A. Yes.

Q. What would be the occasion for your visit to South Bend with Coach Butts?

A. On two or three occasions when he had a day off he would come up here and go down to see a Notre Dame game. Another time he went to an Old Timers' game, or I think twice we went to an Old Timers' game.

Q. Do you recall attending any other athletic contest with Coach Butts, other than the athletic games you have mentioned?

A. Yes, I attended a Florida game with him about five or six years ago, I guess it was. I'm not sure of the date.

Q. Was that a Georgia-Florida game?

A. Yes, Georgia was playing. I shouldn't say I attended the game with him; I went down to see one of his games.

Q. Do you remember which Florida school?

A. Pardon?

Q. Was it the University of Florida?

A. In Jacksonville.

Q. Did you have occasion to visit with Coach Butts on your trip to Jacksonville during that time?

A. I met him before that game.

Q. Now do you recall any other athletic contests that you have attended or have been present when Coach Butts was present?

A. I saw his game in the Orange Bowl when he played Missouri, I believe.

Q. What year was that, do you recall?

A. I don't remember.

Q. That was the year when the University of Georgia played the University of Missouri in the Orange Bowl in Miami, Florida?

A. That's right.

Q. Now, have you ever attended a World Series game with Coach Butts?

A. World Series Baseball game?

Q. Yes.

A. No.

Q. Have you ever attended any professional football games with Coach Butts?

A. Several All-Star games.

Q. When you say "All-Star games," are you referring to—

A. All-Star football.

Q. Are you referring to the game where the All-Stars from the colleges play the leading team from the professionals for the previous year?

A. That's right.

[fol. 1171] Q. Where is that game played?

A. Soldier's Field, here.

Q. That is here in Chicago?

A. Right.

Q. Do you have any other mutual acquaintances with Coach Butts, other than Coach Frank Lahey?

A. I probably know a great many people that he knows. I don't know of anybody that's close to him that I also know.

Q. Would Coach Wilkenson at Oklahoma be in that group?

A. Coach Wilkenson is a good friend of mine.

Q. Is he also a friend of Coach Butts, or do you know?

A. I wouldn't know.

Q. What other coaches are you acquainted with or considered to be friends with?

A. I probably know thirty coaches.

Q. Could you give us those that you recall, please, sir?

A. I can recall a few of them. I know Coach Brennen at Notre Dame, I know Coach Koherick, I know Coach Jones at Oklahoma.

Q. What is Coach Jones' position?

A. The assistant coach. Brenny Crimmons real well at Indiana. Joe McGartle, he used to be an assistant coach for Notre Dame. Coach Grandalius.

That's all I can think of at the moment. I know a good many more than that.

Q. How about Coach Paul Bryant?

A. Brown?

Q. Bryant, at the University of Indiana.

A. To the best of my knowledge I never met him.

Q. You haven't mentioned any other coaches in the South-eastern conference other than Coach Butts?

[fol. 1172] A. Not that I can recall.

Q. Have you ever made any trips with Coach Butts, other than the one to Miami that you have mentioned?

A. I never made a trip to Miami with Coach Butts?

Q. You just happened to be in Miami at the same time, but you didn't travel together?

A. That's right.

Q. Have you ever made a trip anywhere with Coach Butts, outside of the Chicago area, other than the ones to the South Bend?

A. Not that I can recall. I met him in New York on two or three occasions when he happened to be there when I was there.

Q. Do you recall the occasion for his being in New York when you met him there?

A. No. He was just there when I was there. I go to New York quite often.

Q. You don't recall the occasion for your being there?

A. No particular reason for being there, either one of us.

Q. Now, what was the purpose of your trip to Atlanta?

A. There was a health food product that I thought Coach Butts might be interested in, called—I cannot think of the name of it. That movie guy on the West Coast was mixed up on it. They took it off the market.

I asked some friends of mine who might be interested in it, and they thought Coach Butts might be interested, to give his football players some employment, and I met him there. It's something like Metrecal, but that isn't it. I met [fol. 1173] him there, and after we both heard the spiel, we both thought it was a phony and walked away from it.

Q. Do you remember the name of this company that manufactured the food?

A. No, but I will get it later. A movie star on the West Coast was behind it, and the Pure Food and Drug people made him take it off the market.

Q. Do you remember the name of the movie star?

A. I'll get the name of it later; I just don't recall right now.

Q. Then what would have been the participation of yourself and Coach Butts in this program, if you had decided to go into it?

A. My only interest in it was the fact that Tom Lahey and a couple of other—Tom Lahey was Frank's brother, and a couple of other insurance people were very interested in getting into it on a sectional or territorial basis. Tom suggested to me that Coach Butts might want to put some of his boys to work with it.

Q. In other words, he would be something of a distributor of the product?

A. That's right. As far as Butts and I personally being involved in any one situation, there was no interest or no intent.

Q. Now was it your previous testimony that some friends of Coach Butts suggested to you that he might be interested in this?

A. No, no. Some friends of mine suggested to me that Coach Butts might be interested in it, and the friends were Tom Lahey and a couple of other fellows that worked for Bankers Life and Casualty.

Q. What were their names?

A. I don't know. I just remember Tom Lahey. He is with Bankers Life and Casualty, too. Nutri-bio.

[fol. 1174] Q. Do you know how to spell that, sir?

A. No, I don't.

Mr. Nussbaun: I think it's N-u-t-r-i-b-i-o.

By Mr. Joiner:

Q. When was this trip to Atlanta?

A. As I recall, it's about three years ago. I'm not sure.

Q. And did you—

A. Possibly two years ago would be better.

Q. Is it your testimony that is the only time that you have been with Coach Butts in the State of Georgia, on this one trip?

A. To the best of my knowledge.

Q. On your trips to New York, do you generally stay at any one particular place?

A. Almost always at the Essex House.

Q. Do you know where Coach Butts usually stays on trips to New York?

A. Well, the one or two times I met him there he stayed at the Essex House also, because I told him I was going to be there.

Q. Now, during the time that you have known Coach Butts you testified that he had visited you frequently in Chicago. Were most of those just of a social type, coming up for a football game or something like that, or were they connected with business?

A. They practically were all of a social type. Not necessarily coming up for a game, but if he happened to be in town he would call me and say he was coming in for some reason.

Quite often he would come in and try to get students out of this area. He would say, "I'm going to be in town, let's [fol. 1175] have dinner and a couple of drinks," which we did.

It was always a social situation.

Q. Did you ever try to help him get students in this area to participate in the athletic program at the University of Georgia?

A. I wouldn't dare.

Q. Why?

A. I would get disowned from the alumni of Notre Dame.

Q. Have you ever been involved in any business ventures with Mr. Butts?

A. No.

Q. Have you ever been approached by Mr. Butts to make an investment in a business venture?

A. As far as me making an investment, no. As far as him asking me for advice as to how he could finance various things, yes.

Q. And do you recall these particular projects that he was interested in getting your advice on?

A. Well, one in particular had to do with some small loan companies that he was involved in in Georgia. He needed financing for them.

Another one was some type of a concentrated orange juice situation.

Q. Do you recall on how many different occasions you spoke to him about the small loan companies?

A. Not offhand. I might have had a phone conversation ten or fifteen times with him.

Q. What about the orange grove project, do you remember how many times you spoke to him about that?

A. Several. He sent me a complete rundown on it, and after looking at it I wouldn't advise anyone to invest in it, and I just didn't do anything about it.

[fol. 1176] Q. Do you recall any other projects that he has asked you to give him your advice on?

A. No, just an orange grove, a concentrated orange juice, and a small loan situation is all I recall.

Q. Now did Coach Butts ask you to invest in either the loan companies or the orange grove project?

A. Did he ask me personally to invest in them?

Q. Yes.

A. No.

Q. Did he ask you to try to obtain capital from a Chicago—from the Chicago area, or was he just asking for your advice?

A. No, he asked me to try to obtain capital for all three of them.

Q. And you say all three of them. I don't believe you mentioned but two.

A. Yes, an orange grove and the concentrated orange juice situation, and a small loan company.

Q. Were you able to obtain any capital for any one of these?

A. Frankly I didn't have enough confidence in any of them to approach anybody.

Q. How long did it take you to make up your mind that you didn't have confidence in these particular companies?

A. Well, after he sent the complete brochure and run-down in on particular these two things, the grove and the concentrated orange juice, I didn't think they were good investments for anybody and I wouldn't advise anybody that I knew to put any money in them.

[fol. 1177] Q. Did you receive information about these companies within a short while after Coach Butts first spoke to you about them?

A. It was over a period of time. I don't recall the time. Probably—we discussed them at various times over a period of seven, eight or nine months.

Q. Do you recall any one particular time when you were carrying on these discussions, more than any other previous time?

A. Yes. I met somebody named Surgent down in Miami with Coach Butts. He asked me to come down and see this gentleman, whoever he—I even forget the name of the company that he represented that had to do with the concentrated orange juice.

After I had had the brochure, the rundown or the statements or whatever you want to say on the entire set-up, I told Wally I didn't think the deal was a solid deal and he asked me to come down and meet Mr. Surgent with him, which I did.

He said that Mr. Surgent could probably explain it better and I would understand it better.

After I got there I was still of the same opinion.

Q. When did you go down to see Mr. Surgent?

A. About two years ago.

Q. After you went down to see Mr. Surgent did you have any further discussions with Coach Butts about this particular project?

A. Possibly. Probably I did.

Q. Would it have been any number, or—

A. You don't just tell a guy, "Well, I don't think your deal is any good," and walk away. You let him talk, I probably talked to him six or eight or ten times about it since.

Q. Now other than that particular period two years ago, [fol. 1178] has there been any period of time since you have been dealing with Coach Butts on these projects in which there was more activity than normal?

A. No, I don't think so.

Q. Would you state whether or not you have invested in a company known as Continental Enterprises, Incorporated?

A. Well, I don't recall investing in it. I bought some stock in it.

Q. Do you recall the amount of your investment in that company?

A. Not offhand. I have got records of it, but I don't recall what it is.

Q. Could you give us an approximation of the amount?

A. Some sixteen or eighteen thousand dollars, I think. Somewhere in that neighborhood. Maybe twenty-three thousand dollars, I am not sure.

Q. How have you fared on that investment?

A. Not well.

Q. Do you have any idea approximately how much your loss has been on the investment?

Q. I got out of some of it before it went all the way down. I probably, today, have about an eight or ten thousand dollar loss.

Q. How did you come to invest in this particular company?

A. Coach Butts called me and told me he thought it was a good investment, that there was indication that they

were about to get a deal with Coca-Cola or Pepsi-Cola, or some big outfit that had something.

I think Corn Products was one of the people that he mentioned.

Q. Did he send you information about this company, or did you have access to it from other sources?

[fol. 1179] A. No, I just took his word for it. That's a very normal thing on a stock. It's like going to the races.

Q. Do you know a gentleman by the name of Louis Wolfson?

A. I have met him.

Q. Do you recall when and where you met Mr. Wolfson?

A. I met him through Frank Lahey.

Q. Do you remember when?

A. Approximately ten years ago in New York, at the Plaza Hotel.

Q. How many times have you seen Mr. Wolfson since then?

A. Possibly twice. Not over twice, I don't think.

Q. Do you recall when these two times were?

A. No. Well, one time, yes.

I met him outside of the Stadium the night that Georgia played Missouri. Other than that I don't remember meeting him.

• • • • •
Dr. H. M. DAVIS called as a witness on behalf of the Defendant, after having first been duly sworn, testified as follows:

Direct examination.

By Mr. Cody:

Q. Dr. Davis, will you give your full name to the Court Reporter?

A. Dr. H. M. Davis, Dr. Hamilton Maxmillian Davis.

Q. Are you a dentist practicing in Atlanta, Dr. Davis?
[fol. 1180] A. Yes, sir.

Q. Where is your office?

A. In Buckhead, 3110 Roswell Road.

Q. Speak so these Jurors can hear you, Dr. Davis.

A. Yes, sir.

Q. In response to a subpoena have you brought your records into Court, certain records into Court with respect to one of your patients, Mr. John C. Carmichael?

A. I have brought some that I felt were pertinent to this.

Q. Yes. Will you state to the Court whether or not you have, since the service of this subpoena on yesterday, undertaken to determine whether or not Mr. John C. Carmichael was a patient of yours on September the 13th, 1962?

A. We have examined, meaning people in my office, have examined the record, and we find nothing to indicate that.

Q. What records did you examine?

A. We took last year's appointment books, both the hygienist's and mine, we took our back records insofar as perhaps a deposit could have been made. We took our daily sheet from which we transpose to a file card a more complete record of the patient.

Q. Did you check your X-ray records?

A. We checked X-rays, the date that X-rays were made. We went back to his original appointment as a patient, traced it right up to the present day. There were intervals when we did not see him.

Q. How long have you been practicing dentistry in Atlanta?

A. December 15th, 1934. I think that is about twenty—it will be twenty-nine years.

[fol. 1181] Mr. Cody: I believe that's all.

Cross examination.

By Mr. Schroder:

Q. Was he a patient of yours during that period in 1962?

A. Yes, sir.

Q. Mr. Cody didn't indicate to you that he testified positively that he had gone to your office on September 13, did he?

A. I am sorry; I'm afraid I don't follow you.

Q. Did Mr. Cody or someone from his staff, they didn't indicate to you that Mr. Carmichael had not testified positively that he had gone to your office that morning?

A. I was told that he might have been there.

Q. Might have been there?

A. Yes, sir.

Mr. Schroder: All right, sir, that's all.

Examination.

By the Court:

Q. Doctor, did your records show any time in September, 1962, that Mr. Carmichael was a patient of yours?

A. There is nothing to indicate that. The first—there was an interval there we did not see him for a while, and then the first appointment of '62, 1962, our records show the 4th day of October, 1962.

[fol. 1182] Q. That was the only appointment that your records show he had in 1962?

A. No, sir.

Q. All right, sir.

A. Following that he had one, I think it was the 12th. I jotted it down.

Q. In other words, for the year 1962, October the 4th, 1962 is the first date that your records indicate he came to your office; is that correct?

A. October 4th, 12th, 26th, 31st.

* * * * *

FRANK SCOBY testified further by deposition as follows:

Direct examination (continued).

By Mr. Joiner:

Q. Do you recall when those two times were?

A. No. Well, one time, yes.

I met him outside of the Stadium the night that Georgia played Missouri. Other than that I don't remember meeting him.

Q. And that was in Miami?

A. Right.

Q. Do you know a Mr. Sam Wolfson?

A. I think I met him once.

Q. Do you recall when and where you met him?

A. At about the same time in Frank Lahey's home in Long Beach, Indiana.

Q. Do you know Mr. George Solitare?

Mr. Schroder: Who?

[fol. 1183] By Mr. Joiner:

Q. George Solitare?

A. Not that I recall.

Q. Other than the business ventures that you have already discussed in which Coach Butts was interested, have you-all had other business dealings?

A. Not that I recall.

Q. Have you discussed any possible future business dealings that maybe didn't go through?

A. No.

Oh, yes, yes, I have.

Q. Would you tell us about that, please?

A. Yes, I have.

I'm about to attempt to make a Scotch brand name, called Sir James Douglas, and I discussed that with Coach Butts after he severed his connection as coach of Georgia, that I might want him to take over the Southeastern section of the country for this as a representative. And that is still a possibility.

Q. Would this Scotch be made here in this country?

A. Bottled in Scotland.

Q. And is that a new brand name?

A. Yes.

Q. It would be your brand name, and you would import this Scotch?

A. That's correct.

Q. Now, what would Coach Butts' duties and responsibility in connection with the distribution of this product be, if the deal goes through?

A. It would be his duties and responsibilities to hire salesmen in certain areas and get distributors for it and be an over-all representative for the product in certain states, and to see that it was properly handled when it got into accounts and probably supervise the sales personnel.

[fol. 1184] Q. Had your discussions reached the point where you could tell me the states that Coach Butts would handle it if the deal does go through?

A. Well, I had in mind Florida and the Southeastern tip of the country down there. There was nothing done, never anything definite.

Q. Would that include Alabama, Georgia, South Carolina?

A. Probably it would. There has never been anything definite about it. That's probably it, yes. That's the thoughts I had in mind on it.

Q. Now what compensation would Coach Butts receive for his part in distributing this product?

A. Well, there was never anything definite on it. It never got that far. Probably it would be some type of drawing account against a commission.

Q. What generally would be the commission for a person in this capacity in the distribution of a product? Is there any set commission in the industry?

A. No, there is nothing set on that. That would be something that would vary, that would have to be mutually worked out.

Q. Could you give us an indication of approximately what commission you had in mind?

A. No, I can't because I didn't have any commission in mind.

Q. Could you give us an indication of, in the industry as a whole, the approximate commission that would be paid?

A. There is no set deal on that. It depends on the man's ability to produce.

Q. Have you negotiated with people in the other areas of the country about the distribution of this product?

A. Yes.

[fol. 1185] Q. And what stage have your negotiations reached with these people?

A. Nothing definite, other than my own organization. I have had some brief conversations with Frank Lahey about being the representative in the Northwest on it, and no definite arrangements.

Q. If you do decide to go through with this project, could you give us an indication of when you will start distributing this product?

A. Yes. Probably about the 10th of August in New York, and about the 20th here.

Q. Do you feel now that you are going to have this product distributed by that time?

A. Yes.

Q. Is it a definite thing now?

A. It is on the water.

Q. In other words, the distribution of this product by you is definite, but there is no definite deal worked out with Coach Butts?

A. Not with anybody else, not with anybody else.

Q. Not with Coach Butts or anybody else in the country?

A. No.

Q. What about the Chicago area? Would you distribute it yourself in this area?

A. That's right.

Q. Have you filed your label with the Liquor Control Commission in the State of Illinois?

A. Not yet. I have Federal approval on it.

Q. And what Federal agency gives approval on that type of thing?

A. The Alcohol Tax Unit.

Q. Do you recall the number of your import license, or if you don't have one, the import license of Better Brands of Illinois, Incorporated?

[fol. 1186] A. No, I don't have it. I can get it for you, but I don't have it.

Q. Does Chi-1-96 sound like it might be this number?

A. I don't know the number.

I can make a phone call for you and get it for you if you want it.

Q. No, I don't think that will be necessary.

Do you recall the dates when you were in New York and Coach Butts was also there, or if you don't recall all of them do you recall any particular dates?

A. I don't recall any of them.

Q. Do you know whether or not any of them have been in the last two years?

A. I think so, on one or two occasions.

Q. Would you say whether or not you have ever loaned any money to Mr. Wallace Butts?

A. Not directly.

Q. Have you indirectly?

A. I arranged a loan for him at a bank.

Q. Would you tell us about that loan, please?

A. I think it was early in 1962. He said he needed ten thousand dollars for awhile, and I asked my bank if they would loan him ten thousand dollars if I would endorse the note.

They said they couldn't go over six thousand dollars because he wasn't a depositor and he wasn't a customer. He did get a six thousand loan at about that time, and I endorsed the note for him.

Q. Do you know whether or not that loan has been paid?

A. I think the present balance on the loan is about one thousand, five hundred.

Q. Have you ever made any gifts to Coach Butts or any members of his family?

[fol. 1187] A. Not that I recall.

Q. During the time that you visited in Atlanta what people, other than Coach Butts, were you with?

A. I don't remember anybody else.

Mr. Joiner: Skipping down to the third question on that page.

By Mr. Joiner:

Q. Would you state whether or not you consider Coach Wallace Butts to be a close, personal friend of yours?

A. I do.

Q. When have you last seen Coach Wallace Butts?

A. Oh, approximately three or four months ago.

Q. Where did you see Coach Butts at that time?

A. Here in Chicago.

Q. Have you ever been in Los Angeles area when Coach Butts was there, or in the Los Angeles area?

A. Not that I recall. I have been in Los Angeles a lot of times, but I don't remember ever meeting Coach Butts out there.

Q. I believe some of your family live in the Los Angeles area, is that correct?

A. My mother did live there.

Q. And is your mother now deceased?

A. That's right.

Q. Do you know a John Smith from Atlanta?

A. Is he in the produce business?

Q. Yes.

A. I think he was up here on one or two occasions with Wally.

Q. Do you know his partner, Mr. Sonny East?

A. No.

Q. Do you know Mr. Frank Childs?

[fol. 1188] A. I met him once at an All-Star game bout eight years ago.

Q. Was that here in Chicago?

A. Here in Chicago.

Q. Have you seen him at any time since then?

A. No.

Q. Do you know Mr. C. D. Young? He is from Atlanta.

A. No.

Mr. Joiner: Skipping now to Page 33, second question.

By Mr. Joiner:

Q. Do you know a gentleman by the name of John Marcus from Augusta, Georgia?

A. No.

Mr. Joiner: Now, to Page 34, the last question on that page.

By Mr. Joiner:

Q. During the college football season of 1957—

Mr. Schroder: Wait a minute until I catch up with you.

Mr. Joiner: Page 34, the last question.

Mr. Schroder: All right, sir.

By Mr. Joiner:

Q. During the college football season of 1957, did you place any telephone calls to Terre Haute, Indiana?

[fol. 1189] A. I may have.

Q. Do you recall whether or not you did?

A. No, I don't.

Q. Do you recall placing telephone calls to Mr. Leo Shaffer?

A. I do.

Q. What was the purpose of these telephone calls?

A. Wager on football.

Q. During the football season of 1957, do you recall approximately how much money you bet on football games?

A. I think approximately fifty thousand dollars over the season.

Q. Will you state whether or not the entire amount was placed with Mr. Shaffer?

A. Yes, I think it was.

Q. Would you state whether or not all of your wagers were placed on the telephone?

A. Yes, I think the majority of them were, if not all.

Q. Would you state whether or not you bet on both college and professional football games?

A. I probably did.

Q. Would you state to the best of your recollection the smallest wager that you placed with Mr. Shaffer during the college football season of 1957?

A. Individual wager?

Q. And what was the amount?

A. An individual wager on one game?

Q. Yes.

A. It probably was five hundred dollars.

Q. Would you explain what you mean by "individual wager"?

A. A wager on any particular game.

Q. On any one particular game?

[fol. 1190] A. Yes.

Q. And do you recall the largest wager that you placed on any particular game during the 1957 football season?

A. Probably two thousand dollars.

Q. What would be the odds on your bet on these games?

A. Eleven to ten.

Q. Would you explain to the Court and Jury the meaning of an 11-to-10 odd?

A. You have to bet one thousand, one hundred to win one thousand, or if you lose, you lose one thousand, one hundred. If you win you win one thousand dollars.

Q. And would you state whether or not it would be correct to say that when the odds are 10 to 11, you would have to bet three thousand, three hundred to win three thousand dollars?

A. That is correct.

Q. Would you state whether or not on this particular football season—

Mr. Schroder: I think you ought to read what comes after that.

Mr. Joiner: All right. "Mr. Schroder: What do you mean by this particular football season? Mr. Joiner: The one which we have had reference to in the last several question, that of the 1957 season."

[fol. 1191] By Mr. Joiner:

Q. (continuing) —your bets would be on a particular game to be won by a particular team by a certain margin?

A. That's right.

Q. And could—

A. Not necessarily on a particular game, I might bet ten games one Saturday.

Q. And could you give an indication of how you would determine which teams to bet on?

A. Everybody has their own system on that. It's guessing and doping.

Q. Well could you give us your system?

A. Well, I didn't have any. The proof of that is that I lost pretty good.

Q. Would you have any advance indication of what the point margin for the teams would be?

A. Pick up any newspaper in the United States and find it.

Q. Where do newspapers get that from, do you know?

A. No, I don't.

Q. Is it uniform throughout the country?

A. Pretty uniform, as far as I know.

Q. If you bet on a particular team and were given 19 points, what would have to be the score of the game in order for you to win?

A. You were giving 19 points or getting?

Q. Giving.

A. They would have to win by 20 points.

Q. And then what if they were taking by 19 points?

A. They would have to lose by 18, or they would have to win by less than 19, excuse me.

Q. What would happen if they won by 19 points?

A. It's no bet, it's a tie.

[fol. 1192] Q. What do you mean when you say "no bet"?

A. It's no bet, it's a tie.

Q. Then what would happen with reference to your money that you put up?

A. Nothing. No action.

Q. You wouldn't get that money back?

A. I never put up money. You don't put up money over a telephone.

Q. Well, how was the accounting procedure for the betting handled, if you didn't actually put money up?

A. You settle over 30 days one way or the other.

Q. Do you recall how many times you settled during the 1957 season?

A. No, I don't.

Q. Do you recall approximately how much you won or lost during the season?

A. As I recall, I lost somewhere between twelve thousand dollars and fifteen thousand dollars during the season.

Q. How would the amount that you won or lost be transported to or from you?

A. Someone would come in and pick it up or deliver it. You would check a figure with them.

Q. Do you recall the name of the person who came by to pick it up from you?

A. Somebody named Lefty.

Q. Do you know his last name?

A. No. I've only seen him on maybe one occasion, or two occasions.

Q. Would you state whether or not you knew this person that you refer to as Lefty prior to the time that the 1957 football season began?

A. No.

[fol. 1193] Q. What if any disagreement did you ever have with Leo Shaffer as to the balance that you owed him or he owed you?

A. I don't ever recall having any.

Q. Was Mr. Shaffer carrying on this operation by himself, or with others?

A. I don't believe so. As I recall, there were several of them on trial in there.

Q. Did you personally know any of the others, other than Mr. Shaffer?

A. No.

Q. Would you state whether or not you placed wagers on football games during seasons prior to 1957?

A. May have placed a few small bets previous to that. I just don't recall. That was the year I got my—got the ring in my nose.

I don't think I did.

Q. Would you give us some indication of the amount you may have bet during the years previous to 1957?

A. I don't recall.

Q. If you did that any at all?

A. I don't recall any bets previous to that.

Q. And when you say that you may have bet, are you referring maybe to bets with a friend who would attend any game with you, five dollars, or something like that?

A. Certainly, you always do that.

Q. Do you still do that?

A. Occasionally.

Q. Do you remember what this fellow, Lefty, looked like?

A. No, sir.

Q. And will you tell us how many occasions you remember seeing Lefty?

[fol. 1194] A. Possibly once. I think in the two or three times he was in there I wasn't even there. I would just leave an envelope for him, and he would pick it up.

Q. Do you recall Wallace Butts visiting you during the football season of 1957?

A. I don't recall any particular instance, no.

Q. Well, did he visit you at any time during the season?

A. He may have. I don't know. In fact, I think possibly that year he might have been up to the All-Star game. I am just not sure about it.

Q. Did Coach Butts usually stay in one particular place when he visited Chicago?

A. No, not that I know of.

Mr. Joiner: Page 44, first question.

By Mr. Joiner:

Q. Mr. Scoby, did you testify at the trial of Mr. Leon Shaffer in 1959?

A. I did.

Q. Do you recall the charge that was made against Mr. Shaffer?

A. I know it had to do with—all I know is that it had to do with the Federal Gambling Stamp situation.

Q. And do you recall the time of year when that trial was held?

A. No, I don't, offhand.

Mr. Joiner: Page 45, second question.

[fol. 1195] By Mr. Joiner:

Q. Would you state whether or not your testifying in this particular trial received some publicity in the Chicago papers?

A. It received a great deal.

Q. Do you recall whether or not it was in all the papers?

A. No, I didn't read all the papers. All I can tell you is it received a great deal of publicity.

Q. Mr. Scoby, I show you Defendant's Exhibit 3 of this date, and ask you to state to the best of the recollection whether or not this is in fact an article about your testimony in Leo Shaffer's trial, which appeared in the Chicago Daily News on July 18, 1959?

A. It appears to be.

Q. And do you recall a number of articles of similar import being in the Chicago papers during that period of time?

A. Yes, sir.

Mr. Joiner: Skipping now to Page 48, the third question.

By Mr. Joiner:

Q. Mr. Scooby, have you been engaged in any gambling activities whatsoever over the period of the last year?

A. No, sir.

Q. Have you had occasion to visit the State of Nevada during the period of the last year?

A. Now wait a minute. Let me clarify that question. Illegal gambling activities, no. Legal, yes.

Q. Would you give us a summarization of your legal gambling activities in the past year?

A. I've done some in Las Vegas in the past year.

[fol. 1196] Q. Would you give us an approximation of how much you won or lost during the past year?

A. No.

Q. Could you tell us whether or not you won or lost?

A. I probably have lost. It hasn't been any great amount either way.

Q. Will you state whether or not you consider one hundred thousand dollars to be a great amount?

A. I consider it a great amount, yes, sir.

Q. And would you state whether or not your losses for this past year have approached that amount?

A. No, they have not.

Q. Would you give us your best estimate of your losses for the past year?

A. Crap table, mostly.

Q. Any other, in addition to that, during the times that you visited Nevada?

A. Possibly a little roulette.

Mr. Joiner: Page 52, question 5.

By Mr. Joiner:

Q. Do you recall the number of times that you visited Nevada during the last year?

A. No, I don't.

Q. Could you give us an approximation?

A. Maybe four.

Q. Would you state whether or not your gambling activities are confined to the State of Nevada, or do you also at times carry on these activities outside the State of Nevada?

A. Not recently, in the last several years.

Q. Would you elaborate on that answer with reference to the previous question, please?

[fol. 1197] A. Well, this deal in Terre Haute had the effect of curing me of this type of activities. No activities since then of any appreciable amount.

Mr. Joiner: Page 55, last question on the page.

By Mr. Joiner:

Q. Have you had occasion to speak with Wallace Butts on the telephone over the period of the last year?

A. Yes.

Q. Do you have an approximation of how many times you have spoken with him?

A. I would estimate somewhere between 25 and 40.

Q. And what was the subject of these telephone calls?

A. Some of them were just things that personal friends would talk about over the telephone for no reason. Some of them were Butts trying to get established in various fields since he was no longer coaching. That's about the extent of it. In fact, that is the extent of it.

Q. Mr. Scoby, would you state whether or not you consider yourself to be a compulsive gambler?

A. I certainly will; I am not.

Q. What is your answer to that?

A. I am not.

Q. Have you recently made a statement to the effect that you are a compulsive gambler?

A. No, sir.

Q. Would you state whether or not your gambling activities—

[fol. 1198] Mr. Schroder: Go ahead.

By Mr. Joiner:

Q. —have been something you have attempted to hide from your friends?

A. No.

Q. Most of your friends are aware of your gambling activities?

A. Well, I didn't put it in the newspaper.

Q. But your intimate friends would be aware of your gambling activities, is that right?

A. I don't know what my friends are aware of. I will make the statement that I haven't attempted to hide it.

Mr. Joiner: Page 64, the fourth question.

Mr. Schroder: Just a moment; let me catch up. Go ahead.

By Mr. Joiner:

Q. Mr. Scoby, do you recall receiving a subpoena to appear and testify at this deposition?

A. Yes, I did.

Q. And do you recall the date and times set in the subpoena for your appearance?

A. The date and time set for this appearance?

Q. Set by the subpoena for your deposition?

A. Yes.

Q. Would you state what that date and time was?

A. 2:00 P.M., on the 22nd of July.

Q. Would you explain to the Court and Jury why you did not appear at that time?

A. I didn't appear on advice of counsel.

[fol. 1199] Mr. Schroder: If the Court please, the last subject matter, I think, that was being discussed in the reading of the deposition, I think the record ought to show when he says he was advised by counsel that he said his own counsel.

The Court: Yes, sir.

Mr. Schroder: I don't want there to be any question about it.

The Court: All right, sir.

Mr. Schroder: And the second one, I believe Mr. Joiner pointed out, the deposition was taken on Tuesday, July the 23rd, and I think the date they were talking about was July the 22nd.

The Court: 22nd; yes, sir.

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Cross examination.

By Mr. Schroder:

Q. Mr. Scoby, counsel for the Saturday Evening Post has spent considerable time cross-examining you or examining you this morning, but he has studiously avoided asking you anything in connection with the article which [fol. 1200] his client has published in its March 23, 1963, issue.

Now, for the record I think it ought to be made known to you that his client denies under oath that it ever implied that there was any gambling motive in connection with the article it wrote in the Saturday Evening Post.

Let me ask you some questions now, which I think might be relevant to the article published by the Saturday Evening Post forming the subject matter of this libel suit.

I think counsel also failed to ask you anything in connection with any telephone conversation which you might have ever had with Wallace Butts, although yesterday he subpoenaed all the records of your home telephone and your office telephone from the Illinois Bell Telephone and Telegraph Company.

In any telephone conversation that you have ever had with Wallace Butts at any time, was the subject matter of betting the outcome of any athletic event ever discussed?

A. No, sir.

Q. To your knowledge did Wallace Butts ever have any information which might indicate to him that you had bet or would bet or might have bet on the outcome of any athletic event without regard to when it might have taken place?

A. Not to my knowledge.

Q. Did you ever discuss betting on any games of any kind with Wallace Butts?

A. No, sir.

Q. In September, 1962, the records indicate that there were approximately three telephone calls placed by Wallace Butts to you. Would you please refresh your recollection [fol. 1201] and tell the Court and Jury what the substance of those telephone conversations were?

A. I don't actually recall any of them, with the exception of one about that time.

Q. Do you recall a telephone conversation having been placed to you by Wallace Butts from Birmingham, Alabama, on September 22, 1962?

A. I don't recall that specific call, no.

Q. Do you recall a man by the name of Sargent talking to you about that time from Birmingham with Wallace Butts?

A. At approximately that time I recall talking with Mr. Sargent.

Q. That was in connection with what subject?

A. It was in connection with financing on this concentrated fruit juice.

Q. During September 1962, or at any time prior to September, have you ever had any telephone conversation with Wallace Butts which related in any manner to a forthcoming game to be participated in by the University of Georgia football team?

A. Well, I may have said, "Well, how do you think you'll do," when he was coaching. I certainly wouldn't say that I haven't asked that question. But that has never been anything further than that.

Q. That was while he was coaching?

A. That's right.

Q. In September 1962, did you have any conversation with Wallace Butts in which he indicated to you that he felt you should place a bet on the outcome of any game played by the University of Georgia?

A. No.

Q. Have you at any time discussed with Wallace Butts on long distance telephone or in person what his thoughts might be with regard to a forthcoming football game so [fol. 1202] that you might be in position to place a bet on the outcome of that game?

A. Well, I would assume that just in the normal conversation when he is up here to an All-Star game, I would say, "Well, how do you think this game will come out tonight, Wally?" Other than some casual remark like that, the answer is no.

Q. Would you use that information to bet on the outcome of the game?

A. No, sir, I certainly would not.

Q. What church do you belong to, Mr. Scoby?

A. Queen of All Saints.

Q. Here in Chicago?

A. Yes.

Q. What religion is that?

A. Catholic.

Q. Are you active in your church activities?

A. Pretty active.

Q. You have a son practicing law here in Chicago?

A. Yes, sir.

Q. He is a graduate of the University of Notre Dame?

A. And Northwestern.

Q. Where did he take his law?

A. Northwestern.

Q. And took his undergraduate at the University of Notre Dame?

A. Right.

Q. How many other children do you have?

A. Three.

Q. Do they live at home?

A. Yes.

Q. What clubs do you belong to here in Chicago?

A. Illinois Athletic and the Chicago Athletic and the Edgewater Golf Club.

[fol. 1203] Q. What have you and your company done towards sponsoring underprivileged athletic teams here in Chicago?

A. We sponsor several Puerto Rican teams.

Q. Did you bring a team from New York to Chicago this past summer?

A. I brought the Puerto Rican All-Stars or champions in here to play the Chicago champions.

Q. Will you now take the Chicago champions to play the New York champions to play the New York champions?

A. On the second of August.

Q. Is it fairly difficult to get into these clubs that you have referred to here in Chicago, the IAC or the Illinois Athletic Club, or Chicago Athletic Club?

A. I don't know that it is. I didn't have any trouble with them.

Q. I believe you testified when you were being questioned by the lawyer for the Saturday Evening Post that you learned your lesson, so to speak, when you testified for the United States Government in the case brought by the United States Government by the party that was referred to here earlier by the name of Shaffer?

A. I think I did.

Q. And it is your testimony today that insofar as your knowledge is concerned Wallace Butts knew nothing about that activity or that team or that case?

A. I couldn't say that he didn't. It was in the newspapers.

Q. But that was in the Chicago newspapers?

A. As far as my personal knowledge is concerned, I don't know that he knew anything about it.

Q. You never discussed it with him?

A. No, sir.

[fol. 1204] Q. You never discussed gambling with Wallace Butts?

A. Not to the best of my recollection. Certainly not on football.

Q. During the year of 1957, were you a mem-

Q. Were you also a member of these clubs that you testified that you belong to?

A. I certainly was.

Q. Will you state—

Mr. Schroder: These questions are being asked him by the Post lawyers, this being the re-direct.

The Court: What page are you on?

Mr. Schroder: 81, Your Honor, right at the top.

Mr. Lockerman: About the middle of the page.

The Court: I see.

By Mr. Schroder:

Q. Will you state who paid for the hotel room and consequential expenses thereto in New York City at the time you were together with Coach Butts at the Essex House in New York City?

[fol. 1205] A: I probably did, I am not sure. The chances are that I paid for it, which is not an unusual thing. I paid for lots of people's rooms.

Q. One of the necessary essentials to your business is entertainment of people in general, is it not?

A. That is correct.

Q. What do you approximately contribute to your church per year in the way of donations?

A. Approximately six thousand dollars.

Q. You have referred, on your direct examination, to various all-star colleges against the leading pro team here in Chicago, which is the game put on for the Milk Fund every summer?

A. I don't know what the fund is, but it is a charity fund, a Chicago charity.

Q. Those games have been played over how long a period of time?

A. I think they have been on ever since I have been in Chicago.

Q. Didn't Arch Ward begin those games back in 1933 or 1934?

A. I don't know when they began.

Q. Since you have been living here in Chicago what is your custom with reference to entertaining visiting dignitaries such as football coaches from all over the country and outstanding players?

A. Well, for about the first—from, say, about 1950 through '56 or '57 or '58 we always—we started having an All-Star party previous to the game, and then taking people out in buses. It becomes such a big thing around 1958, that we discontinued it. We used to have as high as—well, at the last one was about five hundred people, and we probably, at that time, would have fifty coaches as our guests [fol. 1206] out of the five hundred people. The rest of them would be our customers.

Then it got so big we couldn't handle it any more, and we discontinued it. The last few years we have just had smaller parties of ten, fifteen or twenty people.

Q. You would take those fifteen or twenty people to dinner before the game?

A. And then bring them back after the game.

Q. And take them to the game as your guests?

A. That's right.

Q. Reference has been made to frequent trips that you have made to New York City. Are you also engaged in business in New York City?

A. I am distributor for Miller High Life Beer in New York City.

Q. Now, Miller High Life Beer is owned by the Miller family, of Milwaukee?

A. That's right.

Q. And the former president of that company, who is now deceased, was Fred Miller who was captain of the University of Notre Dame Football team in the late twenties, 1929, I believe?

A. Yes.

Q. Frank Lahey played on the same team with Fred Miller whose family owned Miller High Life, and he was president until his death a couple of years ago?

A. That is correct, about six years ago.

DR. O. C. ADERHOLD having resumed the stand, testified further as follows:

[fol. 1207] Cross examination* (continued).

By Mr. Schroder:

Q. Dr. Aderhold, you testified yesterday, I believe that Coach Butts looked upon you as an adviser of his?

A. Well, he said that he appreciated my counsel and came to see me to talk about some of his problems.

Q. After Coach Butts resigned as head football coach, you and the other officials there at the University of Georgia began to look around for someone to succeed him as head football coach?

A. Yes, sir.

Q. Coach Butts, at that time, recommended as his successor Johnny Griffith, didn't he?

A. Well, I believe I will have to make an explanation as a part of that answer.

Q. Will you give me the answer first, and then you can explain it, sir.

A. Mr.—Coach Griffith was on his list, and he estimated that he was probably the best prospect on a list that he sub-

mitted. That was not a complete list that the coaching committee interviewed, however.

Q. Well, then, the answer to my question would be "Yes", would it not? He had him at the top of his list as coach to succeed him as head football coach at the University of Georgia?

A. Well, he listed those that he thought had possibilities of succeeding him as head coach, and in a note—well, he evaluated each one of the, made some evaluation of each one of them, and regarding Johnny Griffith he said, "He is a good organizer; he will have the respect of other coaches, and he is probably the best prospect of the staff."

[fol. 1208] The Court: Did you take that to be that that was his number one choice?

The Witness: I would interpret that to be correct.

By Mr. Schroder:

Q. In 1961—

A. May I—the explanation that I would like to make is that when Coach Butts visited me on the Sunday afternoon that he indicated that he wanted to be relieved as head coach, we talked about not only a successor, without calling any names, but a successor, and spent a considerable length of time as to the major responsibilities that he would assume or could assume if the Board elected him as a full-time athletic director. Among other things he said that, "I think the Board ought to make this decision, but I will supply to you and any committee, anyone else you want to, my private evaluation." And it was in respect that he submitted a list of all the coaches that he thought had possibilities, and made an evaluation of them, all the coaches that are now—that were at that time on the staff.

Q. And as you just said, you interpreted that to mean that Coach Griffith was his Number One choice?

A. Yes. He did not, I must say, rate them or say "This is my choice," but he did say that, "I think these qualities would indicate that he would be a good coach." He talked

about some of the others and indicated what he thought were their strengths and weaknesses.

Q. In 1959, Coach Butts was elected to the presidency of the American Football Coaches Association, wasn't he?
[fol. 1209] A. Yes, sir; I believe that's right.

Q. And there have only been, throughout the history of that Association, two other coaches given that honor in the whole time, Coach William Alexander of Georgia Tech and Coach Dan McGuggan of Vanderbilt?

A. I really don't know.

Q. You don't know? Before you became President of the University of Georgia, Dr. Aderhold, Coach Butts had been head coach at the University approximately ten or eleven years, hadn't he?

A. Yes; ten or eleven; I don't remember whether it was '39 or '40 he was elected head coach.

Q. And during that time he produced six bowl teams, didn't he?

A. I don't know; I am sure that must be right.

Q. In 1950 when you became President until Coach Butts retired as head football coach there was but one Bowl team produced, was there?

A. That's correct.

Q. Now, in 1959, Coach Butts was elected the Number Two football coach in the whole United States, wasn't he?

A. I believe so; I am not sure of the year.

Q. You referred in your testimony yesterday to what was said at the meeting on February the 22nd of this year, and you testified that although you weren't sure, I believe, whether Coach Butts was asked to sign an affidavit, you were sure that he was asked to submit to a lie detector test, didn't you?

A. Yes, sir; I thought both, but that was my testimony, and that is the way I remember it.

Q. You know that he has taken one since then, don't you?
[fol. 1210] Mr. Joiner: May it please the Court, I don't believe that this evidence would be admissible unless we are

going to show the circumstances under which the tests were taken, the type of tests that were taken, where it was taken, and the operator who administered the test.

The Court: I will let him show he took a test. I will not let him show any results of any test. Do you understand that? All parties understand that?

Mr. Schroder: Yes, sir.

The Court: All right, sir.

By Mr. Schroder:

Q. But you do know I made him take tests since then, don't you?

A. I saw that in the press; yes, sir.

Q. During your ten year period or your tenure of office at the University as President, Wallace Butts was more or less known as "Mr. Georgia"; wasn't he?

A. Well, he had several names. That was one of them, by some people; yes.

Q. Before the Saturday Evening Post published its article on March 23, 1963, did anyone from the Saturday Evening Post talk to you?

A. No, sir; I don't believe so.

Q. Do you know Charlie Trippi—

A. Yes, sir.

Q. —of the University—formerly of the University of Georgia football staff?

[fol. 1211] A. Yes, sir.

Q. He resigned, I believe, during this past summer?

A. Yes, sir.

Q. His family still lives in Athens, and he does when he is not away from the City?

A. Well, I don't know; I assume so.

Q. He has lived there for a number of years?

A. Yes; that's correct.

Q. Are you familiar with his reputation in the community?

A. Yes, sir—well, I think I am.

Q. Is it good or bad?

A. As far as I know it is good.

Q. Would you believe him under oath?

A. Yes; I think I would. I don't know of any reason that I wouldn't.

Q. Do you know John Gregory?

A. Yes, sir.

Q. He is still on the staff there as the defensive coach?

A. Yes, sir.

Q. He also has lived in Athens a number of years, has he not?

A. Yes.

Q. Are you familiar with John Gregory's reputation in the community?

A. Well, I don't know that I am.

Q. You don't know that you are? Is that your answer?

A. Yes; I think that is a fair answer.

Q. You know Bill Hartman?

A. Yes, sir.

Q. Former President of the University of Georgia Alumni Association?

[fol. 1212] A. Yes, sir.

Q. He is presently a trustee for the Georgia Student Educational Fund?

A. Yes, sir.

Q. He lives in Athens?

A. Yes, sir.

Q. You know Bill Hartman's reputation in the community in which he lives?

A. Yes; I do.

Q. Is it good or bad?

A. It is good.

Q. Would you believe him on oath?

A. Yes, sir.

Q. You know the Captain of the 1962 Georgia football team named Ray Clark?

A. I just know him as a football player; I don't know him personally.

Q. Do you know his reputation in the community?

A. No, sir.

Q. Sir?

A. No, sir.

Q. Do you know Brigham Woodward?

A. I know he is on the team.

Q. You know his reputation in the community?

A. No, sir.

Q. You know Mickey Babb?

A. I know he is on the team.

Q. Do you know his reputation in the community?

A. No, sir.

Q. Do you know Wally Williamson?

A. Yes, sir; I do.

Q. Do you know his reputation in the community?

A. No; I don't believe I do.

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[fol. 1213] DR. FRANK ANTHONY ROSE called as a witness on behalf of the Plaintiff, after having first been duly sworn, testified as follows:

Direct examination.

By Mr. Schroder:

Q. Will you state your full name, please, sir?

A. Yes, sir. Frank Anthony Rose.

Q. At the present time where are you located professionally and in what capacity.

A. As President of the University of Alabama; Tuscaloosa, Alabama.

Q. Now, Dr. Rose, will you please, for the benefit of the Court and Jury, state your qualifications, your educational background, and similar information?

A. Well, I am a graduate of Transylvania College in Lexington, Kentucky, Transylvania Seminary, Lexington, Kentucky, and I did graduate work in philosophy in the University of London.

Q. After you graduated from there, what did you do?

A. I served as head of the Department of Religion and Philosophy at Transylvania College. I was minister of a large church at Danville, Kentucky for five years, and at the age of twenty-nine became President of the Transylvania College, Lexington, Kentucky, from which I had graduated, and served there for seven years as President. On September 5th, I will have finished six years as President of University of Alabama.

Q. What literary or other associations do you play a particular part in or a significant part in at the present?

[fol. 1214] A. Well, I am serving as chairman of the Board of Visitors of Eyre University.

Q. Of what?

A. Of Eyre University. I am a member of the Board of Curators of Transylvania College. I am chairman of the Commission on Graduate Study Experiences for the Armed Services, for the American Council on Education. I served on the Board of Trustees of the National Foundation for Infantile Paralysis. I am serving as chairman of the March of Dimes in my sixth year in Alabama. In 1954, I was selected one of the ten outstanding young men in the United States. I was selected in 1955 as the outstanding citizen in Lexington, Kentucky. And last year I was selected as the outstanding citizen of Tuscaloosa, Alabama.

Q. As President of the University of Alabama, Dr. Rose, did you attend a meeting in Birmingham, Alabama, on Sunday, February the 24th, 1963?

A. Yes; I did, sir.

Q. Would you relate, please, who attended that meeting and where it was held?

A. I received a telephone call from Dr. Aderhold three or four days before, Sunday, February the 24th, asking if I could meet him in a confidential meeting with Commissioner Bernie Moore, the Commissioner of the Southeastern Conference, and I asked him what was the purpose of the meeting? And he said, well, for the time being that he would like to say, to discuss an ethical matter. And so

on that morning at 9:00 a.m., I met with Dr. Aderhold. He brought with him Mr. Cook Barwick, and we met with Commissioner Moore.

Q. Will you just briefly summarize so that we can lay the foundation for later work by you what was reported at that meeting, briefly. I don't want to go into everything that [fol. 1215] was said and string it out. Just briefly summarize what was said.

A. Well, Dr. Aderhold and Mr. Barwick told me that—that there had been a telephone conversation or telephone conversations between Coach Bryant and Coach Butts regarding the coming football game to be played in September—around the middle of September.

Q. In 1962?

A. In 1962. They further informed me that there was a man by the name of Burnett that had heard the telephone conversation and that he had stated that Coach Butts had given Coach Bryant some information that would affect the outcome of the football game between the two institutions.

Q. Were you—was that the first knowledge you had of any such incident?

A. Yes, sir; that was the first knowledge.

Q. What did you do after you left that meeting?

A. Well, before I left the meeting I asked him questions, and there were many additional questions raised in my own mind, and then I drove home alone, which is some fifty-four miles away, greatly disturbed and thinking over every facet of the problem. And then when I got home I spent the rest of the afternoon thinking about it and trying to reach some conclusion as to what was the best approach to make to the problem. I came to the conclusion that the best thing to do was to, first, face the person that had been accused, or one of the persons accused, and so I called Coach Bryant and told him to meet me in my office at 7:00 P.M., where we did meet, and I interrogated him and talked with him for a period of about three hours.

[fol. 1216] Q. Was it or not indicated by Coach Bryant that that was the first time he had had any notice of this incident?

A. Yes, sir; it was the first time that he had heard about it. I might say that I think that he was confused by it. He did not recall specific telephone calls at first, and then I kept sharing with him the notes that I had taken while I was talking with Dr. Aderhold and Mr. Barwick and Commissioner Moore, and then he recalled that he had had many telephone conversations with all of the coaches and athletic directors with whom we play. He informed me that this was nothing unusual, that coaches talk about many things before a ball game, and that he had had a great deal of concern about playing the University of Georgia, particularly after we had had the unfortunate experience that we had had with Georgia Tech over the Holt-Granning incident in which Holt, one of our football players, had left the ground on a block, a tackle, and his forearm had caught the Granning boy of Georgia Tech in the jaw and broke his jaw, and we had received such unfavorable publicity about all of this that I had informed him on several occasions that he must use every precaution to see that this type of incident never happened again. Coach Bryant was just as concerned about the bad publicity of the University as I was.

And that he had been informed in a meeting with Coach Butts that there were new interpretations of rules and that he should make himself aware of them, and that he had tried to understand them in previous conversations and could not understand these new interpretations, that he, at a coaches' meeting, a meeting of the coaches of the Southeastern Conference, raised many questions about the new [fol. 1217] interpretations, and this was later confirmed by Commissioner Moore that Coach Bryant asked more questions about the change of rules of the new interpretations than any other—than all the other coaches in the meeting.

Coach Bryant said that he had talked several times with Coach Butts about this personally and on the telephone. He had talked to him about ticket sales, as there were approxi-

mately six to eight hundred tickets that the University of Georgia had not sold, and that he was concerned because there were many people in Alabama that wanted the tickets, but he didn't specifically remember discussing any one thing.

He said he could have talked about investments, Continental Enterprises, in which they had investments, but that he would try to think about it and try to answer as many of the questions as he possibly could.

Q. Did you, after that particular meeting in your office on Sunday evening, February the 24th, talk to Coach Bryant again on several occasions?

A. Yes, sir. I talked to him twice after that before I wrote to Dr. Aderhold.

Q. Between February the 25th and March the 6th, were you in Tuscaloosa all of the time?

A. No, sir. I told Dr. Aderhold that I would be unable to give him an immediate report of my conversation with Coach Bryant, as I had to go to New York City to attend a meeting of the National Foundation for Infantile Paralysis, would be gone most of the week, which I was. I returned on Thursday evening, was tied up in conferences all day Friday, and then had to leave again Monday morning to go to Washington for a meeting of the American Council on [fol. 1218] Education, and I wrote to Dr. Aderhold that morning before I left.

Q. There has been identified here a letter—

Mr. Schroder: May I please—this is not a copy of the exhibit; this is not the one with the exhibit number.

The Court: Don't you have the original?

Mr. Schroder: I will borrow it from Mr. Cody. May I borrow it, Mr. Cody?

Mr. Cody: What's that?

The Court: The original letter.

Mr. Schroder: That is one of the ones we can't find right now; it was in that file.

The Clerk: Is this the one you are talking about?

Mr. Schroder: Yes.

The Clerk: That is Defendant's Exhibit No. 21.
 [fol. 1219] Mr. Schroder: Just mark that here.
 The Clerk: Just say "D-21."

By Mr. Schroder:

Q. There was identified here yesterday a document, Exhibit No. D-21, being a letter to Dr. O. C. Aderhold, dated March 6, 1963, signed Frank A. Rose, from the office of the President, University of Alabama. The original at the moment is not available. I want to ask you some questions about that, if you recognize it as a letter from you to Dr. Aderhold—

A. Yes, sir.

Q. —or a copy of a letter?

A. This is a copy of the letter I dictated to my secretary on the morning of March the 6th, before I left to go to Washington. I had to catch a plane at 8:40 and hurriedly dictated this letter. I did not have time to read it after dictating it. She signed it, was to confer with Coach Bryant and ask him if this was a good interpretation of the conversations that we had, Coach Bryant was out of the City, and she signed it and sent it on to Dr. Aderhold.

Q. All right, sir.

A. It was in this—it was in this letter, as best as I as a layman or a University President, could try to answer some of the questions that Dr. Aderhold and Mr. Cook Barwick had raised at our meeting.

Q. To what extent, if any, are you familiar, Dr. Rose, with the game of football as it is presently being played and the so-called jargon, language of the trade used by coaches?
 [fol. 1220] A. Well, I thought I understood it pretty well until I really began to get into this investigation, but I have never played organized football; I played "sandlot" football as a boy, but I am not very familiar with all of these terms of scientific modern-day football.

Q. To what extent, if any, Dr. Rose, would you say you were familiar with interpretations of football rules that have been issued or promulgated by some national body?

A. I don't know anything about them.

Q. In that letter—well—

Mr. Schroder: May I ask the witness to read the letter, Your Honor?

The Court: No, sir; you can ask him about any portion of the letter. The letter will be in evidence.

Mr. Schroder: All right, sir. It is sort of difficult—

Mr. Cody: Your Honor, I was mistaken. The original of that letter is in another file.

Mr. Schroder: That's better. If I can use one and he use the other.

The Court: All right.

[fol. 1221] By Mr. Schroder:

Q. Dr. Rose, in the letter, being the exhibit you are holding in your hand, you advised Dr. Aderhold you had made an investigation?

A. That is true, yes, sir.

Q. And that you were attempting by this letter to pass on to him the information which you had received in your investigation, including what Coach Paul Bryant had to say to you about conversations that he had had with Coach Butts?

A. Yes. These were the questions that he raised.

Q. In that letter you point out to Coach Aderhold—President Aderhold about Coach Butts' position in the football rules committee—

A. That's right.

Q. —as representative-at-large? In the third paragraph of that letter you state that Coach Butts had discussed these rules changes with Coach Bryant and the two were together at some meeting where Coach Butts told Coach Bryant that—and you say this—“That the University of Georgia had plays that would severely penalize the Alabama team and not only would cause LeRoy Jordan, an Alabama player, to be expelled from the game, but could severely injure one of the offensive players on the Georgia

team." Do you have any explanation or interpretation or whatever you might term it?

A. Mr. Schroder, I was writing this to Dr. Aderhold, the President of the University of Georgia. He had asked specifically about the University of Georgia. This was not limited to the University of Georgia; it could have been to any University we were playing. Paul Bryant was greatly concerned about criticisms that had been made against the University, what had been termed "hardnose" football, [fol. 1222] "dirty" football. Our University had been severely penalized by people who had not acted responsibly. I was trying to reveal to him the purpose of the conversation.

He believed that Coach Butts was a good football statistician, he knew the rules; he served on the National Rules Committee; he knew the new interpretations. And he wanted to find out from him what these changes were, what could affect the result of an incident that would cause one of our football players to be dismissed from a game that would cause another bad ugly incident as it happened with Georgia Tech. But his was not Coach Butts' explanation of what—

Q. Coach who?

A. Coach Butts' explanation to Coach Bryant that Georgia Tech had any set plays or that he was going to reveal any set plays or patterns, but the techniques that were used offensively.

Q. Blocking, you mean?

A. Butt blocking. I remember he named that. I didn't know then and don't know now what that means. Head blocking. I don't know what that means, but these were some of the things that he said that he was concerned about.

Q. That Coach—

A. And I think rightly so, because we had discussed it many times. We did not want to go through a game what we had gone through with Georgia Tech.

Q. In your—in the next paragraph, Paragraph 4 of the letter, you indicate that Coach Bryant asked Coach Butts

to let him know what the plays were, and on September 14, he called Coach Bryant and told him—

A. Well, these were techniques. I think any layman would use the term "plays" and if I hadn't been told better [fol. 1223] I would use the "plays" and I still forget and use the "plays," but these were "techniques," offensive techniques.

Q. There was a question, you say, about another one of the offensive plays of the Georgia team that could seriously penalize the Alabama team and bring additional injury to a player. Coach Bryant asked Coach Butts to check on that play, which he did, and called back on September 16?

A. Well, now, this was my interpretation of what Coach Bryant told me that could have been discussed or he could have talked about in answer to a question that Dr. Aderhold had raised about one of the Georgia players, Mr. Burnett hearing Coach Butts say that one of the Georgia players committed himself too quickly, and I asked him about that, that from my notes, and he said, "I don't know what that means," he said, "I've never heard about it." But he said, "It could have been some technique that was being used and some approach of defensive tactics that I could have used." And this was my interpretation of Coach Bryant's guess of what they could have been talking about there.

Q. When you—

A. And it was my best answer I could get to the question that Dr. Aderhold raised in my mind when he wanted an answer to it.

Q. What, if anything, does it mean to you with respect to football when someone has said "committed himself too fast"?

A. I don't know, sir. I can't tell you. I can make a guess that maybe he started off too fast or he showed what he was going to do rather quickly. I just don't know. I would have to guess at it.

Q. You then write, "It was then that Coach Bryant [fol. 1224] changed his defense and invited Mr. George

Gardner, Head of the Officials of the Southeastern Conference, to come to Tuscaloosa and interpret for him the legality of his defenses. This Mr. Gardner did the following week. The defenses were changed and Coach Bryant was grateful to Coach Butts for calling this to his attention."

A. I made an error there. It was before the telephone conversations that Coach Bryant had had Mr. George Gardner there with the permission of Commissioner—with the permission of Commissioner Moore to meet with his coaching staff and go over his defenses and to ascertain whether they were legal or illegal.

Q. Under this new interpretation?

A. Under the new interpretations that Coach Butts had told him about. And it was on the basis of his conversations earlier with Coach Butts and in the coaches' meeting the coaches of the Southeastern Conference meeting that he became so concerned about these new interpretations and felt it would serve a good purpose.

Q. Your next paragraph, you quote Coach Bryant as informing you that "Calling this to his attention may have favored the University of Alabama football team, but that he doubts it seriously. He did say that it prevented him from using illegal plays after the new change of rules."

A. Yes, sir; he said that he didn't know. Well, I asked him if he felt that any of these rule interpretations, calling his attention to the changes or anything else that was said, could have affected the outcome of the ball game, and he said that he doubted it very seriously, that he received no specific information or any specific knowledge that would [fol. 1225] affect the score or the outcome of the ball game between the University of Alabama and the University of Georgia.

Q. The same information that he says was told him by Coach Butts was told to, I think you said, a whole meeting of the coaches on another occasion in Birmingham?

A. Yes, sir; a meeting of the coaches of the Southeastern Conference, I believe.

Q. And Coach Butts was the chief speaker at that meeting?

A. Yes, sir.

Q. Did you ever receive a reply to your letter from Dr. Aderhold?

A. No, sir; I did not. And when we parted Commissioner Moore's office—

Q. I will take that back from you.

A. —each one of us agree, we would conduct our own private confidential investigation, and that we would share with one another within the next few days as much information as we could get, and I never heard from Dr. Aderhold again until I called him several weeks later. He never acknowledged my letter. He did not inform me that the letter had been subpoenaed. This letter was written hurriedly. It was not written as a legal document to be used in any court case. It was not verified. It was not read after it was dictated, and I think substantially if you read that total letter and take it in its total context, you will find I conveyed to Dr. Aderhold that on the preliminary investigation that I had made, in talking with Coach Bryant, talking to his banker, talking to two of his friends—

The Court: To his banker?

[fol. 1226] The Witness: To his banker.

A. (By the witness) —talking to two of his friends, talking to two of my vice-presidents and business manager of athletics, that in my estimation the whole thing, based on the notes and the information that they had heard, that they had received from Mr. Burnett was overplayed, and I still think that that letter, taken in its full context, conveyed just that.

Mr. Schroder: You may examine.

Cross examination.

By Mr. Cody:

Q. Dr. Rose, would you mind giving me your signature on this piece of paper?

A. Yes, sir.

Q. You want to step down here to the desk?

A. You want me to sit down?

Q. Doesn't matter, just whatever you want to do. Thank you.

Mr. Cody: Will you identify this as Defendant's Exhibit—I believe it will be 25 or 26, somewhere along there.

The Clerk: Defendant's Exhibit No. 27 for identification is a signature of Dr. Rose.

[fol. 1227] (Whereupon the above paper was marked for identification only as Defendant's Exhibit No. 27.)

By Mr. Cody:

Q. Now, Dr. Rose, when Mr. Schroder read you the first paragraph of this letter, he read the language as follows, as just making an investigation. You mind if I read you the entire paragraph?

A. Be fine.

Mr. Schroder: May the witness have a copy in his hand?

The Court: Do you have an extra copy? Does someone have an extra copy?

Mr. Cody: Yes, sir.

By Mr. Cody:

Q. "I have spent a great deal of time investigating thoroughly the questions—," now, when Mr. Schroder read you that paragraph, he left out the word "thoroughly," didn't he?

Mr. Schroder: If the Court please, I didn't indicate I was reading that letter verbatim. I think Your Honor told me it couldn't be read.

The Court: That's right. Well, read the letter to him. Read the whole paragraph and ask him did he write that.

[fol. 1228] By Mr. Cody:

Q. "I have spent a great deal of time investigating thoroughly the questions that were raised during our meeting in Birmingham and have talked with Coach Bryant at least on two occasions. As best as I can ascertain, this is the information that I have received." Now, let's talk about the first paragraph just a minute.

A. All right, sir.

Q. Was that paragraph written as you dictated it?

A. Yes, sir; that is; as best I recall that is the paragraph that I dictated.

Examination.

By the Court:

Q. You mean you didn't dictate all the letter?

A. Sir?

Q. You didn't dictate all the letter?

A. I dictated all the letter, yes, sir.

Cross examination (continued).

By Mr. Cody:

Q. Am I to understand your testimony, Dr. Rose, that you did not read the letter after you dictated it?

A. No, sir; I did not.

Q. Nor did you sign it?

A. No, sir. I had to catch a plane for Washington.

Q. Who did sign it?

A. My secretary.

Q. Who is your secretary?

A. Mrs. Stanley Park.

Q. Let's pass to the second paragraph.

"Coach Butts has been serving on the football rules committee, [fol. 1229] and at a meeting held last summer of the Rules Committee the defenses used by Coach Bryant, L. S. U. and Tennessee were discussed at length and new rules were drawn up that would severely penalize these three teams unless the defenses were changed—" you've got "changes"—"particularly on certain plays." Now, is that written as you dictated it?

A. I would say that it is, because my secretary usually does a pretty good job. I couldn't swear to it, sir, but I think I did dictate that.

Examination.

By the Court:

Q. Is that what you intended to convey?

A. No, sir. Now, I know it is not what I intended to convey because I have gotten a great deal more information about it, and it wasn't the defenses used by L. S. U. and Tennessee and Alabama were discussed. All defenses used by universities were discussed, but it was reported that the officials were specifically going to watch these three institutions, the University of Alabama, L. S. U., and Tennessee, to see that these new interpretations were carried out and there was no violation of the rules.

Q. From whom did you acquire that information?

A. Well, Coach Bryant gave it to me after he received a copy of this letter.

Cross examination (continued).

By Mr. Cody:

Q. Now, let's pass on to the third paragraph.

"Coach Butts had discussed this with Coach Bryant and [fol. 1230] the two were together at some meeting where

Coach Butts told Coach Bryant that the University of Georgia had plays that would severely penalize the Alabama team and not only would cause LeRoy Jordan, an Alabama player, to be expelled from the game, but could severely injure one of the offensive players on the Georgia team."

Now, I believe you stated that is incorrectly transcribed or what explanation is it you make of that?

A. Mr. Cody, what I said, I was trying to answer for Dr. Aderhold this—this commitment or quick commitment that he had raised as a question that Mr. Burnett had purportedly—was reported to have given him, and I was speaking to the President of the University of Georgia, singling out his institution, but I could have been talking about any institution in the Southeastern Conference or anywhere else. I wasn't talking about any specific play of the University of Georgia football team as given to them by their coach.

Q. Well, were you undertaking here to quote Coach Bryant?

A. No, sir. Let me go further and say that in my discussions with him he talked about a lot of things that they could have been talking about, and tried—tried to explain to me these new interpretations which he didn't quite understand, himself. He was puzzled by them, and ten days later I wrote the letter after talking with Coach Bryant, and I tried, in my layman's language, to reveal what Coach Bryant had not said specifically to me, but what, in a general discussion of what their discussion could have been about; wasn't even sure of that. I was trying to reveal to Dr. Aderhold my interpretation of it.

Q. Dr. Rose, do you know enough about football to know [fol. 1231] that if one team can execute a play, or formation in such a fashion as to cause the opponent to be penalized, that that would be beneficial to the team that had the ball?

A. Yes, sir; I think I can recall one where it would be. If the team played like they were going to snap the ball

and didn't, and caused the team to get off-sides and got them a five-yard penalty, I can understand that.

Q. Sometimes a five-yard penalty can mean the difference between a win and a loss, can't it?

A. Yes, sir; I'm not arguing that with you.

Q. In looking at these notes that you observed that Mr. Burnett had made—I assume they showed you these notes?

A. No, sir; I have never seen them.

Q. They didn't bring them to Birmingham?

A. I can't answer that, but they weren't shown to me.

Q. You have seen them since?

A. I saw them in the Saturday Evening Post article.

Q. What did you see, a photostatic copy in the Post article?

A. I don't recall. I remember seeing it there; I guess it was a photostatic copy.

Q. Do you know enough about the game of football to know that on a particular play the ball is snapped on a count of 3, 4, 5, or 6, in order to try to draw the opposing team off-sides?

A. No, sir; I don't; I don't know that much about it.

Q. Let's pass on to this fourth paragraph, Dr. Rose. First, let me ask you one other question about Paragraph 3. Did Coach Bryant say anything to you about a description of the play that would injure a Georgia player?

A. He tried to explain some descriptions of plays, not of Georgia, but just plays in general. Mr. Cody, after he finished I still didn't understand what he was talking about.

Q. Well, let's pass on to the fourth paragraph.

"Coach Bryant asked Coach Butts to let him know what the plays were, and on September 14, he called Coach Bryant and told him."

Did you get that information from Coach Bryant?

A. He said that he—this is not specifically what Coach Bryant said. He said that he had talked with Coach Butts about some of these rule interpretations, some of these

techniques, offensive techniques, defensive techniques, and that he would like to know more about them because he did not understand the new interpretations as they were.

Q. But you say here, Dr. Rose, "Coach Bryant asked Coach Butts to let him know what the plays were."

A. Yes, but this had to do with these new techniques, or the violations that could be committed with these new techniques.

Examination.

By the Court:

Q. Are you referring to defensive techniques? You are talking about Jordan?

A. I was talking about—Coach Bryant says that he thinks that he is one of the best defensive coaches in America. He says he thinks that Coach Butts was one of the best offensive coaches; and over the years he had [fol. 1233] talked with Coach Butts about offensive techniques, of patterns, that they had even shared—that he had given Coach Butts, over the years, some defensive techniques, and little points about defenses, and that he had gotten from Coach Butts, just as he had gotten from Coach Wilkinson, he said at Oklahoma, and Coach Royal at Texas, points, offensive points that were helpful to him and his boys.

Q. What was your understanding of why Mr. Jordan could be penalized and relieved from the game on a defensive play? Is that what you are talking about?

A. If an offensive player was injured, just like—

Q. Yes, sir.

A. —the Granning boy, you see, and Darwin Holt, and he said if he ever lost LeRoy Jordan in a ball game, he would probably lose the ball game, and I think we would agree with that.

Cross examination (continued).

By Mr. Cody:

Q. In other words, if Jordan had been put out of the game, it would help Georgia? *

A. Not necessarily Georgia; any school.

Q. Well, Georgia included?

A. Well, yes; it could be.

Q. If they were talking—if they were talking on September the 14th—

Mr. Schroder: If the Court please, the Post article says it was September the 14th, but I think Mr. Burnett says it was September 13th.

[fol. 1234] Mr. Cody: I think we can agree on that.

The Court: Well, whatever it was.

Mr. Cody: There is some confusion.

By Mr. Cody:

Q. Dr. Rose, if they were having this conversation on September the 13th, and the Alabama game was the upcoming game for the 22nd, the opening game of the season, does it seem reasonable to you that this discussion involved some subsequent game of Alabama?

A. No, sir; it doesn't, to me, not taking all of the facts and all of the information that I now have, I don't think so.

Q. Now, let's—let's pass to the second sentence in that fourth paragraph.

"There was a question about another one of the offensive plays of the Georgia team that could seriously penalize the Alabama team and bring on additional injury to a player."

Do you recall what Coach Bryant was talking about when he gave you that information?

A. No, sir; and I didn't understand it then.

Q. Do you understand it now?

A. No, sir; I don't. And I'd be afraid to try to explain it, but it had—it had something to do with—with some kind of tackling technique. Now, I don't know whether it was butting with the head, or just—or leaving the ground, or whatever it was, he tried to explain it. He went over and [fol. 1235] over it again, and I still couldn't explain it, and I still don't know it now. I did see somebody try to explain it on television, a television program later, and it made sense to me then, and I can't recall it.

Q. Wouldn't it have been a lot clearer for you to have let Coach Bryant dictate this letter?

A. It would have been much better, yes, sir.

The Marshal: Let's have order, please.

By Mr. Cody:

Q. The last sentence in Paragraph 4.

"Coach Bryant asked Coach Butts to check on that play, which he did, and called back on September 16." Did you get that information from Coach Bryant?

A. Coach Bryant said to me that there was a particular point of play, not just the University of Georgia's play, but a play that they had talked about and discussed. He said he didn't know where he saw the play first, that it could have been in a clinic, but he knew that Coach Butts, over a period of years, had used it, and he wanted to know about that particular point on that play. Coach Butts didn't recall it, but was going to try to think about it and would try to get him additional information on what a man did here or did there, but it wasn't—this wasn't a University of Georgia play.

Q. Give me the date again you were talking with Coach Bryant again on this subject?

A. February the 24th, the night that I—

Q. In your office on the campus at Tuscaloosa?

A. Yes, sir.

Q. Does it seem inconsistent to you, Dr. Rose, that Coach [fol. 1236] Bryant would, at that time, have told you that

he did call Coach Butts on September 16, and yet when we undertook to take his deposition, or he later has stated that he remembers nothing about that call; does that seem inconsistent to you?

A. Coach Bryant told me that night that he didn't remember calling Coach Butts back.

Q. Well, where did you get—where did you get the date September 16th, and who from?

A. He told me that he could have called him back, and then I checked our records and there was a call to Athens, and I asked him if he could have made that call, and he still couldn't remember whether he made that call or not.

Q. Well, then, the last sentence in Paragraph 4 is a misstatement of fact?

A. On the basis of what I knew then, I didn't think it was, but if he—if he did not call back, somebody called Athens from the University—from Tuscaloosa, on September 16.

Q. Are you aware of the fact, Dr. Rose, that when I took your deposition in Birmingham some few months ago, that you testified that you didn't find out through the telephone records that there was a September 16 call until long after this letter was written?

Mr. Schroder: Let's see where that is in the deposition.

By Mr. Cody:

Q. Do you remember making a statement to that effect?

A. No, sir; I don't remember it.

[fol. 1237] The Court: Just a moment; just a moment.

Mr. Schroder: I want a point of order here.

The Court: Where is the deposition?

The Witness: I have one here.

By Mr. Cody:

Q. Well, may I ask you when you did find out for the first time that there was a call?

A. I found out before I wrote the letter because I didn't even know about the dates; in fact, I am not sure it is the 16th or 15th. You keep saying 14th, and then they were supposed to have called back two days later, that would have been the 16th, and then Mr. Schroder said 13th; if it had been two days later it would have been the 15th.

The Court: I think, Doctor, there's been confusion about whether the first call occurred either on the 13th or 14th. I am right on this, am I not?

Mr. Cody: It's really the 13th and 16th. We are not in any disagreement on that.

The Witness: You have been trying to confuse me on those two days.

[fol. 1238] By Mr. Cody:

Q. I'm not going to try to confuse you. Let me ask you this question, Dr. Rose. When it says in this letter that "Coach Bryant asked Coach Butts to check on that play, which he did, and call back on September 16," were you—were you undertaking to convey the statement that Coach Butts called back on September the 16th, or Coach Bryant—that is the last sentence in Paragraph 4.

A. That at that time, Mr. Cody, on checking the telephone calls, there was a call from Tuscaloosa to Athens. I surmised that Coach Bryant had called back Coach Butts, but Coach Butts and Coach Bryant had never told me that he had called back; that he didn't remember it but I surmised that he had, because there was a call from Tuscaloosa to Athens.

Q. Now, let's pass on to the fifth paragraph.

A. All right, sir.

Q. "It was then that Coach Bryant changed his defenses . . ." I am not finishing that sentence. I want to first ask you if Coach Bryant told you that he changed his defenses?

A. Coach Bryant told me that he brought his players in—not his players, his coaching staff, and that they went

over and over these new interpretations to try to see how much understanding they all could get of them, and that they would try to carry them out as best they could understand them, but he said they could not get agreement of understanding on it, and it was then that he had Mr. Gardner but he had had Mr. Gardner before the call.

Q. I am going to get to Mr. Gardner in just a minute. But he did tell you he changed his defenses?

[fol. 1239] A. That he changed his techniques; yes, sir; not his defenses. It would be his techniques.

Q. The word "defenses" is error?

A. Yes, sir.

The Court: What's in the letter, "defenses" or "techniques"?

Mr. Cody: "Defenses."

The Court: Oh, yes.

By Mr. Cody:

Q. Now, reading on in the same sentence, "... and invited Mr. George Gardner, Head of the Officials of the Southeastern Conference, to come to Tuscaloosa and interpret for him the legality of his defenses." And now you say that Mr. Gardner did not come there thereafter?

A. He came before.

Q. He had already been there?

A. Yes, sir; and this—Coach Bryant didn't know—didn't know whether he had been before or after the telephone call.

Q. But his particular statement, too, is an error?

A. Yes, sir.

Q. Also the following sentence, which is along the same line: "This Mr. Gardner did the following week." And then, the next sentence in that fifth paragraph: "The defenses were changed and Coach Bryant was grateful to Coach Butts for calling this to his attention."

[fol. 1240] A. The techniques. It says "defenses," but it was techniques.

Q. Well, that, too, is an error; right?

A. Yes, sir; but I am not a modern-day football coach.

Q. From whom did that information come that is contained in that sentence?

A. I asked him if he—if, after meeting with Mr. George Gardner and his discussions with Coach Butts on rule interpretation and rule changes, if he had learned anything that changed any of his coaching or any of the techniques of his team, and he said that he had learned nothing that made a difference.

Q. Let's turn over to the next page. This is the sixth paragraph and the first sentence.

"Coach Bryant informs me that calling this to his attention may have favored the University of Alabama football team, but that he doubts it seriously." Is that a quotation from Coach Bryant, a statement that he made to you?

A. I asked Coach Bryant if he felt in his discussions with Coach Butts that he received any knowledge or information that would affect the outcome of the game, and he said, no, but that any time that you learn something from another coach, or in talking to another coach that would keep you from getting penalized, of course, it favored them, but he doubted seriously that if anything that he learned from Coach Butts really made a great deal of difference to the outcome of that particular game.

Q. Dr. Rose, when you use the term "outcome," are you talking about the result of the game?

A. Yes, sir.

Q. That is, win or a loss?

A. Yes, sir.

[fol. 1241] Q. Did you ever doubt in your mind, before that game, that Alabama would lose? May I put it another way, if that confuses you.

A. No, sir; it doesn't confuse me.

Q. Did you know that Alabama—

Mr. Schroder: Wait a minute, whoa; whoa.

The Court: Let him answer.

5. A. (By the witness) I didn't know how the game was going to come out. It was the first game of the season, and I just didn't know, but after the game was over I was surprised that the score wasn't bigger than it was.

The Marshal: Let's have order, please.

A. But I didn't know before the game how it would be.

Q. You used the expression "first game of the season"; why did you use that expression as you did?

A. Sir?

Q. Why do you use the expression you did about it being the first game of the season? Is that because you know so little about the opponent?

A. Yes, sir; and our own team.

Q. But you did know that Alabama had a much better team than Georgia?

A. I was much more impressed with it after the game.

Q. What about it before?

A. No, sir; I thought we had a pretty good team, but I didn't know what Georgia had.

[fol. 1242] Q. Didn't the Birmingham papers and the Tuscaloosa paper state what the advantage was, or what the odds were? Don't you always read that?

A. No, sir; and I have a coach that always thinks he's going to lose every ball game, and he tries to keep me thinking that. I had no idea.

Q. Well, let, then, get back to this question. This sentence I read you, the first sentence there in the sixth paragraph, that "Coach Bryant informed me that calling this to his attention may have favored the University of Alabama . . ." is that your undertaking to quote something in this letter that Coach Bryant told you?

A. In answer to my question that if finding out these new rules, the interpretations, and in his conversation with Coach Butts, did he specifically get anything, and he said he didn't think so. He said any time you talk to anybody, or you read what's been written in the paper, or just in many ways, you pick up information. He said some of it

is good, some of it is bad, but he said it may have favored. But I don't know.

Q. But doesn't it seem inconsistent to you now, Dr. Rose, that since you have found out that George Gardner had been in Tuscaloosa the week before and had pointed out these so-called rule changes, doesn't that statement seem inconsistent to you?

A. No, sir; it doesn't, not in its full context.

Q. When you were having this conference with Coach Bryant, this three-hour conference, did he tell you that time George Gardner had been to Tuscaloosa?

A. Yes, sir.

Q. You know who George Gardner is, don't you?

A. Yes, sir; I know who he is.

[fol. 1243] Q. For the record, state—

The Court: Who is George Gardner?

By Mr. Cody:

Q. State who he is?

A. He is the Commissioner of the Southeastern Conference Officials. I believe that is his title.

Examination.

By the Court:

Q. Would he be head of all the referees and umpires?

A. I don't know whether he would be head of them, but he would be responsible for assigning them and getting them to this place to call this football game, and that one, and then evaluating their work at the end of the year.

Q. In other words, he would be the final authority on interpreting the rules, insofar as the officials enforcing them; is that correct?

Mr. Schroder: I think we can stipulate that Mr. Gardner is really in charge of all of these. Your Honor indicated, umpires, referees, headliners.

Mr. Cody: That's right.

The Court: So Mr. Gardner would be in charge of the [fol. 1244] referees and instruct them as to what penalty—when to enforce a particular penalty.

Mr. Schroder: That's correct, sir; he teaches them what to watch for.

The Court: Insofar as the Southeastern Conference is concerned?

Mr. Schroder: That is correct.

Cross examination (continued).

By Mr. Cody:

Q. I have one more sentence I'd like to read to you, Dr. Rose, in that same paragraph. "He did say . . ."—who is "he" that we are talking about?

A. Coach Bryant.

Q. "He did say that it prevented him from using illegal plays after the new change of rules." Is that what Coach Bryant told you?

A. He said that after the visit of Mr. Gardner and after his conversation with Coach Butts that he understood some of these rule changes and interpretations, and that it did prevent him from using illegal plays.

Q. Does it seem inconsistent to you, Dr. Rose, that Coach Bryant, in response to your inquiry on this particular date, could have given you all this information and yet subsequently does not remember any conversation about it at all with Coach Butts?

A. It doesn't in light of my conversations with him for [fol. 1245] that three-hour period, Mr. Cody, because: one, I think he was kind of shocked at the specifics of the thing, or the two telephone conversations, because there had been numerous personal conversations, telephone conversations with other coaches, discussing some of the same problems. He had called and talked with Coach Darrell Royal in Texas, whom we do not play during the regular season, but played in the Orange Bowl game. And there were others that he named, and there was a great deal of information about the whole thing that he just didn't specifi-

cally remember, but said that this is what we could have—could have been talking about, but I don't remember. When I checked the files a call had been made back.

Q. Had you checked the files before you talked to Coach Bryant?

A. No, sir.

Q. To confirm the telephone call?

A. Sir?

Q. To confirm the telephone call of September 16?

A. No, sir; no, sir; I had not.

• • • • •
Cross examination (continued).

By Mr. Cody:

Q. Dr. Rose, on Page 20 of your deposition, which was taken in Birmingham several months ago, do you recall making this statement that is at the bottom of the page: "He—" meaning Coach Bryant—

Mr. Schroder: Could I have this copy?
[fol. 1246] The Court: Don't stand behind him. Give him the original.

By Mr. Cody:

Q. "He—" meaning Coach Bryant "—said that it wasn't unusual for coaches to talk about many things previous to a football game." Did you know when he told you that that Wallace Butts was not the coach at Georgia?

A. Yes, sir.

Q. You knew he had not been coach since 1960?

A. I knew he was athletic director, and Coach Bryant is athletic director, and they talk about football too.

Q. But he is also the coach?

A. Yes, sir.

Q. He is the head coach?

A. If he were going to talk to anyone about football tickets, he'd talk to Coach Butts.

Q. Is that what he told you they were talking about, tickets?

A. He said they could have been talking about tickets.

Q. When you prepared this letter of March the 6th, had you consulted with any of your executive staff of the University?

A. Yes, sir.

Q. One of your vice-presidents?

A. One of my vice-presidents, my present Director of Alumni Affairs who used to be Business Manager of Athletics and Ticket Manager. Those were the ones with whom I talked.

Q. Do you know if either one of those gentlemen had ever played football?

[fol. 1247] A. No, sir; I don't believe they had. They may have; I don't know.

Q. On Page 30 of this same deposition, I'd like to read you one question and answer that is recorded here in the middle of the page; these lines are not numbered: "Dr. Rose, was the information obtained by you and counsel communicated in this letter of March 6 obtained from Coach Bryant? Answer: "Yes." Is that a correct transcript of your testimony at that time?

A. Yes, sir. But—but limited, because, as I said, he recalled many things that they could have been talking about, and that my letter was my best layman's interpretation, Mr. Cody, of the many things that Coach Bryant said they could have been talking about.

Q. But such technical information as is contained in your letter of March 6—

A. That technical information in my letter is not worth five cents as I see it now, because I did a very poor job being a technician on modern football. But I did the best I could do to convey to Dr. Aderhold—

Q. I am not arguing about that. But the information contained in that letter, you did undertake to explain, whether it is techniques or rules or what-not, you did obtain it from Coach Bryant?

A. It is my—it is my interpretation of what I thought Coach Bryant was trying to tell me.

Q. I see. You referred a moment ago in your direct examination by Mr. Schroder to the Granning incident. What was that you were talking about, Dr. Rose?

A. Mr. Cody, I explained it that in our football game with Georgia Tech in 1961, that on a play in which there was a kick, and Granning was receiving the kick, that [fol. 1248] Darwin Holt came in fast and left the ground and hit Granning, and Granning ducked his head down just as he hit, and it broke his jaw. And this was a terrible thing to happen, but these things do happen in football. But the University of Alabama, the total University, was severely criticized by a few members of the press, and particularly one here in Georgia, in which, in later months, they called our University a football factory, a University that the coach ran, a University that was interested only in football, and I will tell you it was terrible, because for a University to spend thirty million dollars a year on academics and less than two hundred thousand dollars a year on athletics to be termed as that, we did not want anything else to happen with any other institution that would create another incident like it.

Q. Now, turn to Page 45 just a minute, Dr. Rose, which—

Mr. Schroder: Excuse me, Mr. Cody, I didn't get the page.

Mr. Cody: 45. Just below the middle of the page.

By Mr. Cody:

Q. —which is referring again to the conference you had with Dr. Aderhold in Birmingham when Bernie Moore was present. I want to read you one question and answer and see if that is a correct transcript of your evidence at that time. "What specifically were these questions that he had raised?" meaning Dr. Aderhold; Answer: "As to whether Coach Butts had given Coach Griffith—" I don't know why it was "Griffith", it should have been "Bryant", I assume—

[fol. 1249] "detailed plays and information about the players of the University of Georgia to Coach Bryant and whether they had helped him in the ball game." Is that a correct transcript?

A. Yes, sir.

Q. With the exception of the clerical error the Reporter made about Griffith?

A. There is no clerical error, Mr. Cody. Read it again.

Q. "As to whether Coach Butts had given Coach Griffith detailed plays—" should have been "Bryant". It mentions Bryant in the following line.

A. No; Had given plays of Griffith to Coach Bryant.

Q. Then there should be an apostrophe after Coach Griffith?

A. That's right.

Q. Dr. Rose, on Page 51—I just have one more excerpt from this record to read to you—up at the top of the page, after discussing this so-called exchanging telephone conversations, Question: "What did he say then?" meaning Coach Bryant. Answer: "He said that he had made a telephone call to Athens and that he was pretty sure that he had called and talked to him about—" and then there is an interruption—"What did he say?" Answer: "That he had called him to talk to him further about the enforcement of the rules." I won't read the balance; if you want me to read the balance I will, but the question I want to read you now, Dr. Rose, when you were giving that testimony, were you sure that Coach Bryant had told you that he had called Coach Butts on that September 16?

A. No, sir. When we checked and found in the files that there had been a call from Tuscaloosa to Athens, Coach [fol. 1250] Bryant checked with other members of his staff to see if they had made the call, and he hadn't ascertained that they had, and so it was that he said that he probably called to Athens himself to talk to him further about the discussion of rules and interpretations as they discussed them before.

Q. Dr. Rose, would I offend you in any way if I asked you to give me one more of your signature? Here is my pen, if you want it.

A. Let me tell you this. She signs all our government contracts. She was on vacation and I signed some, and the government sent it back and said, "This is not the President's signature."

The Court: Let's just go ahead and sign it.

By Mr. Cody:

Q. Thank you. Do you remember, following that deposition that was taken in Birmingham, that you sent me—

Mr. Cody: Will you identify that, please?

The Clerk: Defendant's Exhibit No. 28 for identification is a signature of Frank A. Rose.

(Whereupon above document was marked for identification only as Defendant's Exhibit No. 28.)

[fol. 1251] By Mr. Cody:

Q. —that you sent me a telephone record which we agreed at that time would be sent?

A. Yes, sir.

Q. Is this the letter with which you transmitted that record?

A. Yes, sir.

Q. Did you sign that?

A. No, sir.

Q. Who signed it?

A. My secretary.

Mr. Cody: Will you identify this, please?

The Clerk: Yes, sir.

Mr. Cody: 29?

The Clerk: Yes, sir. Defendant's Exhibit No. 29 for identification is a letter dated June 19, 1963 to W. B. Cody from Frank A. Rose.

(Whereupon above document was marked for identification only as Defendant's Exhibit No. 29.)

By Mr. Cody:

Q. Dr. Rose, I have subpoenaed several letters from the Georgia School of Technology which you have written to one of the officials there that have been produced this morning in response to that subpoena. The first one that I'd [fol. 1252] like to call your attention to is a letter of November the 29th, 1961.

Mr. Schroder: Your Honor, I haven't seen any of these documents.

The Court: All right, sir, let Mr. Schroder see them.

Mr. Cody: I believe I will wait and get them all identified. Will you identify these three exhibits?

The Clerk: Yes, sir.

Mr. Cody: It doesn't matter in which order.

The Clerk: All right. Defendant's Exhibit No. 30 for identification is a letter dated November the 29th, 1961, to William B. Hartsfield from Frank A. Rose.

(Whereupon above document was marked for identification only as Defendant's Exhibit No. 30.)

The Clerk: Defendant's Exhibit No. 31 for identification is a letter dated February 20, 1963, to Dr. Edwin D. Harrison from Frank A. Rose.

[fol. 1253] (Whereupon above document was marked for identification only as Defendant's Exhibit No. 31.)

The Clerk: Defendant's Exhibit No. 32 for identification is a letter dated December 18, 1962, to Dr. Edwin D. Harrison from Frank A. Rose.

(Whereupon above document was marked for identification only as Defendant's Exhibit No. 32.)

By Mr. Cody:

Q. Dr. Rose, I show you the Defendant's Exhibit No. 30, this particular exhibit being a photostatic copy, but I'd like to ask you if that is your signature? Did you sign the original of that letter?

A. No, sir; that is not my signature.

Q. Is that one your secretary signed?

A. That is my secretary, Mrs. Park.

Q. Now, Exhibit No. 32, will you state whether or not this is a letter to Dr. Edwin D. Harrison, President of Georgia Tech? Did you sign that letter?

A. That is my secretary.

Q. Same lady?

A. Yes, sir.

Q. Now, I will ask you the same question about Exhibit No. 31?

A. That is my secretary.

Q. Now, on this last exhibit which I have shown you, you note that this seems to be a personal letter; you called him "Ed"?

A. Yes, sir.

[fol. 1254] Q. Are you in the habit of letting your secretary sign personal letter of that type?

A. Yes, sir.

Q. Dr. Rose, the pen which I used a moment ago is not the type pen I intended to use. Would I offend you if I asked you to give me one more signature?

The Marshal: Let's have order, please.

Mr. Cody: Thank you. Will you identify that?

The Clerk: It will be Defendant's Exhibit No. 33.

(Whereupon above document was marked for identification only as Defendant's Exhibit No. 33.)

Mr. Cody: I believe that's all we have.

Examination.

By the Court:

Q. Doctor, did you—did you consider this matter of great importance, the letter you were writing to Dr. Adershold?

A. The accusation, Judge, I think was one of the most disturbing things I have had to happen to me in thirteen years of college administration. I don't think I have ever had anything to upset me more.

Q. Is it your testimony—is it your testimony or is it not that you dictated the letter and your secretary signed it [fol. 1255] before you saw the letter written? Is that right?

A. Yes, sir. And she was to check it with Coach Bryant to see if this was a good representation of our discussion.

Q. Did she check it?

A. No, sir. He was out of town, and I had told her to get it off that day, and she went ahead and sent it.

• • • • •
 Redirect examination.

By Mr. Schroder:

Q. As soon as you—did you subsequently call Dr. Adershold on the telephone and point out to him the fact that this letter was inaccurate?

A. That's right; yes, sir.

• • • • •
 JAMES WALLACE BUTTS, having resumed the stand, testified further as follows:

Redirect examination.

By Mr. Schroder:

Q. Coach Butts, you heard the testimony introduced here by the Saturday Evening Post yesterday and today given

by members of the Athletic Board, certain members of the Athletic Board?

A. Yes, sir.

Q. Now, Mr. Butts, I want to ask you, in spite of whatever they may think or say, in your testimony before this [fol. 1256] Court and Jury that you have given in this case, is that or not the truth?

A. That is the truth, sir.

Q. As an expert in the field of coaching, is there any play that any offensive team could have that would severely penalize a defensive team and cause a defensive player to be expelled from the game?

A. No, sir; and may I explain briefly?

Q. Yes, sir.

A. If a play was run around the right end or a play was run around the left end, if the fullback ran over right guard, if the left halfback ran over the tackle, it would not make any difference on any one of those plays. A defensive man might violate the techniques of defensive football by piling on, hitting with his rear, butting him with his head, but there is no particular play in football that would cause any such violation. I would like to add, sir, that it is possible that by changing the count a defensive player or players might be drawn off sides, and in that event it would cause a penalty to the defense.

Q. Would the defensive man who went off side be put out of the game?

A. No, sir; it would cost him five yards.

Mr. Schroder: All right, sir; he's with you.

Mr. Cody: We have nothing further.

Mr. Schroder: You may come down.

[fol. 1257] Examination.

By the Court:

Q. Is there such—Coach Butts, may I ask this question. This is on football and I am certainly no authority.

A. Yes, sir; Your Honor.

Q. Is there such a play as the offensive team drawing the defensive team off sides and getting a penalty?

A. Your Honor, I explained that by changing the count or by some guard or tackle moving, it could draw the defense off tackle.

Mr. Schroder: Off side.

By the Court:

Q. And the opposite team would be the one penalized? There is no such thing as an illegal formation on defense, as long as you have eleven men on the field and not off side, it is not illegal, is it?

A. Your Honor, you could put one on the line of scrimmage and eleven back in the seats if you wanted to.

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SUMMATION TO JURY ON BEHALF OF DEFENDANT

Mr. Cody: Gentlemen of the Jury, representing the defendant in this case, I want to sincerely speak to you this morning with some mixed emotion. I say "emotion" because in the first place this case involves several parties, the first one, the plaintiff in this case who, for many years, enjoyed the most that could be obtained out of his profession. He arrived at or near the top of that profession, and he did that with the help and the assistance and the cooperation of the Athletic Board and the faculty of the University of Georgia over a period of many years, and he was well compensated for his services. He was a man who was held in the esteem and confidence of those University officials.

The other party involved, one other party involved is the defendant in this case, the Saturday Evening Post, which is a publication that is the oldest in this Country, two hundred thirty-six years, I believe, continuous publication. It started as far back, I believe, as the days of Benjamin Franklin, and I assume that it has been received with public acceptance.

But the third party involved in this case, as I view it, is the University of Georgia, the oldest State educational institution in the United States, started even prior to the adoption of the Federal Constitution. The University of Georgia has trained many people in this State to some extent, Mr. Schroder as well as myself, trained us to do the job which we are trying to do in this case, and, if I may say so, it trained the Judge who is in charge of the trial of this case.

What disturbs me most is that a man should reach the top of the profession about which I am talking, and then at some point in his life come to a change which embarrasses himself and his University and the people who he was employed to train.

I would like to read one small portion of an instrument [fol. 1259] which has been introduced in evidence which I believe, in just a few words, expresses the responsibility that falls upon a football coach or, on the other hand, an athletic director who is in charge of the training of the youth of our State.

My days at the University go back to those of Chancellor Barrow, David C. Barrow, a gentleman who never ceased to talk about the fact that the greatest asset of our State is its youth, and when you fail to train them properly, you have slipped a cog.

And, basically, that is one unfortunate and unpleasant experience that we, as lawyers and you as jurors, have to face in this case, because something has failed.

The University of Georgia is a member of the Southeastern Conference, and its athletic program is about the same as any other large university, and a great deal of money is spent on it because an athletic program is just as important in the education of our youth as the academic portion of that education. In that connection the Southeastern Conference has adopted the rules and the enforcement program, the Constitution and Bylaws of the National Collegiate Association, which is an organization designed

to keep collegiate athletics on a high plain and commensurate with the standards which you are trying to establish in the training of these youthful people.

Here is what this says: "Individuals employed by the Association"—meaning the Athletic Association—"employed by or associated with member institutions for the administration, the conduct of coaching of intercollegiate [fol. 1260] athletics are in the final analysis teachers of young people. Their responsibility is an affirmative one, and they must do more than avoid improper conduct or questionable acts. Their own moral values must be so certain and positive that those younger and more pliable will be influenced by fine example. Much more is expected of them than of the less critically placed citizen."

From that point I would like to pick up just a minute one or two things and then I will briefly discuss the one or two law points involved in this case. I want to tell you what happened to the plaintiff in this case, because it is important in leading up to what subsequently developed into what I think to be a critical event.

This trouble started back in 1960, and I will briefly run down a few points in this evidence in order to illustrate to you what it meant to this plaintiff and to our University. Back in 1960, and this evidence comes from the best friend that Wallace Butts ever had, Bill Hartman, the best and the closest friend he ever had, because he was the intermediary who stood between Coach Butts and these graduates of the University of Georgia and in an effort to then straighten out this unpleasant situation, and if you remember the evidence you will recall that he stated that in 1960 he met with the group in Atlanta who had called attention to this night life on the part of Coach Butts and the resulting unpleasantness that it was causing our University, and it resulted in Bill Hartman returning to Athens and confronting Coach Butts with the situation. And it developed out of that he was notified that unless he resigned, the entire matter would be thrown before the [fol. 1261] Athletic Board of the University.

He did resign and in fairness to him and as another indication of the generosity on the part of the University officials, all of whom were sympathetic with him, all of whom had been friends of his for years, including Dr. Adershold, permitted him to resign upon two conditions, one, that he would have nothing whatsoever to do with football, and the other condition was that they would let him be athletic director, a very generous opportunity on their part and an opportunity for the man that had done wrong to straighten himself out.

Frankly, it seems to me from the evidence which has been introduced in this case that the University officials may have made a mistake and now regret it, but, nevertheless, out of their own generosity they undertook to straighten out a man who was their friend and who needed another chance.

He had that opportunity. They did reduce his salary from eighteen thousand five hundred dollars down to twelve thousand five hundred dollars, but certainly with the lesser responsibilities, if any, that he took on, I would say that that was a reasonable salary upon which he could have maintained himself.

But he became bitter and that bitterness grew from bad to worse, and you have heard the University officials state under oath that it became so bad that it became a statewide topic, and again he had to be confronted with these facts. He not only had failed the University in the training of our youth, which principal responsibility was to [fol. 1262] build character in these young people who were at the University to be trained, and a part of their training was building character, he not only failed in that, but in the process he lost his own, and one of the most tragic things that I have experienced in my forty-one years of the practice of law is to find a man in the responsibility which he at one time held to have dropped to the point where his best friend and his employer and the people with whom he is closest associated will come before a disinterested jury,

face-to-face with the man himself, and say that he has lost his character. He has my sympathy more than yours, and I speak to you in the deepest sincerity when I say that.

I have only one explanation of it, and that is the associations that he kept. I don't know what influence this man Scoby had on him. Scoby said he doesn't gamble any more. I will say this to you, that in all of my experiences I never heard of a man that bet fifty thousand dollars on collegiate football in one football season. If I had a friend that had been my friend over a period of sixteen or seventeen years, if he followed that kind of a practice I believe I would know about it, and I would shun his companionship.

And I will tell you something else. Maybe one standard of conduct may apply to me as a lawyer, but there is a higher standard of conduct to be applied to a man who is a football coach at a university or head of the Athletic Department.

Again, let me mention Chancellor's Barrow's name. I can't help but do it, because that man did more for me than [fol. 1263] any man with whom I have ever come in contact with.

When I attended the University of Georgia for four years, Chancellor Barrow used to make a talk in chapel every day for about twenty minutes, and he never ceased to say how important it was to maintain a good companionship. When I got there I was a scrawny-looking fellow with a twelve and a half collar and a pretty inexperienced man, and that was the first experience I learned at the University of Georgia, before I opened a book, and that is the experience Schroder has had and that is the experience that Judge Morgan has had, and it is the finest lesson that any young man at the age of eighteen can experience, because he is in the formative years of his life where he is trying to train himself for business, and at the same time in most cases it is the first time that that young man has ever been away from home for any long period of time. He is on his own when he gets there, and he needs the help and guidance,

and there are men at the University today that now take the place of such people as Professor Sanford and McPherson and Doctors Vocoff, Payne, and Parks, and those people, Hooper, who were there when I was there, trying to do the same job.

Now, let me pass on from that for just a moment. This business that I am talking about of Coach Butts toward the University and toward the Athletic Board, and including the coaching staff, in spite of a letter which Mr. Schroder may read to you which said he was a great friend of the coach, and so forth, he condemned them all, and he not only did it in private, he did it in public.

[fol. 1264] You heard a man testify here, Bill Bradshaw, a big strapping, fine-looking young man who lives in Canton, Georgia, and who is now on the Athletic Board of the University of Georgia, who heard these comments. It wasn't hearsay; he heard them himself. And how on earth a man could condemn the University of Georgia in the presence of his employers is beyond my comprehension, and it shows this, and this is why I am sympathetic to Coach Butts.

Something snapped in him; something changed. From 1960 right on up until the day that he was relieved as Athletic Director he was a different man. He had hurt himself, his University, and the people who he was employed to train, and neither I nor anybody in this courtroom will ever know who was stained by that conduct, nor will you ever know where it stopped. It may be influencing some young fellow today who himself is unconscious of the example which has been set before him, and he today may not know how that influence has affected him.

There are some ten thousand students at the University of Georgia, or thirty thousand, as I recall, over the State, but those are branches, about six or seven at Georgia Tech—that is a part of the University System—but there is about ten thousand at Athens. It would be hard to tell who has been affected by such an influence. But I will say

this to you, if the public at large over the State was aware of this misconduct, if the faculty was aware of it, if the Athletic Board was aware of it, and if the alumni of our good University was aware of it, I will guarantee you that a big portion of those students were, and if one man has [fol. 1265] been influenced badly by it, that is all the condemnation that is needed.

I want to mention one other thing. You recall the evidence of Mr. Bolton, Dr. Aderhold, and some of these other men whom I hope you will accept as worthy of belief. They are still your employees; they are charged with the responsibility of educating your children, your relatives and mine, and if they are not worthy of belief, they, too, should be discharged.

In early January, 1963, after this continuance and after this bitterness and after this open criticism, and after a continuance of this same conduct, instead of getting better, it got worse.

They call him in—and bear in mind, this is before any of the Butts-Bryant affair—and he was notified that as Athletic Director he would have to resign, otherwise the full Board was meeting on January the 28th. This discussion with Coach Butts was on the 20th which followed a meeting of a special committee that met on January the 18th, and on the 20th, he was notified that at the full Board meeting to be held on the 28th, if he hadn't resigned by that time that they would discharge him. So he resigned.

They did arrange for him to stay on, let it be effective June 30, so as to make some arrangement about a pension, and then—

Mr. Schroder: If it please the Court, I don't think it is good for any lawyer to interrupt another lawyer during [fol. 1266] his summation, and I am not going to interrupt Mr. Cody at any time during his summation, but his recollection as to what the evidence is and mine may differ, and the jury, I think, ought to know that what we are talking about in our summations, is our own recollection of what

the evidence is and not what the evidence itself might be. I do not agree with the last statement that Mr. Cody made.

The Court: I think the jury heard the evidence, and their recollection is probably as good as yours, Mr. Schroder's, Mr. Cody's and mine. I will let him go ahead.

Mr. Cody: All right, sir.

There is one other thing that happened at that meeting that his attention was called to, and that is that during this period of reprieve which he had been given, during which time he had been made Athletic Director, he developed a great many outside business interests, including this loan business and a lot of others, which your employees and mine, the faculty at the University of Georgia, decided conflicted with his interests and gave him no time to fulfill the responsibilities that had been placed upon him, and that was another reason why he was asked to resign.

In that connection, let me point out one thing that shows you how Coach Butts more or less cracked up. I don't say this in criticism of him. I am really ashamed to mention it, but in fairness to my client I am charged with the responsibility of pointing out to you matters which, if serious, give you reason not to believe what he says. I don't think he [fol. 1267] knew himself what he was doing. I don't think he fully understood or comprehended the effectiveness of it, because when he went over the State in an effort to obtain these licenses to operate these small loan companies, he had to get the permission of the Comptroller of the State of Georgia for the issuance of a license, because the small loan business in Georgia is controlled by the Comptroller General, a public official of our State.

Exhibit No. 11 of the defendant is a financial statement which this man gave to your public official, and it says—it recites his assets and his liabilities in detail, and then says at the bottom that his net worth on July the 17th, 1961, is two hundred five thousand nine hundred eighty-eight dollars, and, yet, in order to obtain your sympathy in this case—I assume that was the reason—he stated on this

stand under oath that he was now insolvent, and Mr. Schroder undertook to ask him how could he become insolvent between July 17, 1961 and the date of this trial, and he said he sold a couple of his stocks. One of them he did—he did receive a loss on it, but the other one turned out to be a big gain, and those two transactions didn't change his financial status one bit; it improved it, if anything, because he said he bought the Georgia International Life Insurance Company stock at six, I think, and sold it at eleven. If he had held onto it, it is a lot more than that now, but that is beside the point.

The point I want to make is that a man that will go to one of your public officials, bet enough to start into this business and a lot of other businesses while he is charged with the duty of Athletic Director, but it is worse, in order [fol. 1268] to obtain the license to do that, to misrepresent your financial condition.

I want to talk to you a minute, Gentlemen, at this point about the law of this case. It is not very complicated. It is fairly simple. Judge Morgan might disagree with me. He is charged with the responsibility of giving you the law of this case, but I want to mention this.

No. 1, we take no issue with the plaintiff in this case with the fact that up until a certain time he enjoyed the greatest of a reputation as a football coach, had many friends throughout the United States, was asked to make public speeches. I will go so far as to say, in all fairness to him, that he knows as much about or did know as much about football as any man in this country, and I, a few years ago, would have put him up against anybody. But the point in this case is, what happened after that, after he terminated his responsibility as a football coach following 60, and how did it affect this case?

I will get to this Bryant affair in just a minute. I don't have much time, but I do have another opportunity to speak to you on Monday, as you probably understood from the Judge's comment. I will have a little time between now and

then to think about what I want to say, and I will try to do a better job than I am doing this morning, but I want to touch now on the question of law involved in this case that I assume the Court will instruct you about.

In a libel action, if some unfavorable comment or critical comment, no matter what that comment is, is made, if the [fol. 1269] defendant can prove the truth of it, there can be no liability, and if you believe that the truth has been shown by a preponderance of the evidence, you must find a verdict for the defendant in this case.

Now, let me define to you or mention briefly what I assume the Court will instruct you about in its charge to you as what it means by "truth". It means substantial truth, not every word in the article. You can make mistakes in the article. It means that the defendant is charged with the responsibility of proving the truth of that part of the article which constitutes the sting of the so-called libel, that is, they could cover a wide area in the article itself and make some mistakes in it, as we have made in this case. There are some errors in this article; no one denies that. We spent hours and days talking about a few mistakes in the article, and I confess that there are some mistakes in it, some misquotations, not particularly chargeable against the Post, although they are responsible for it because it came through their agent—Furman Bisher was one of them, who is a responsible journalist in Atlanta—and if he makes a mistake, we have to be responsible for it. Nobody has dodged that issue, but if somebody is misquoted or some misstatement is made which is a reflection on somebody else, it doesn't have anything to do with his particular case.

The first day of this trial I went home that afternoon, a little bit tired, and picked up the paper to read it, and some newspaper man made a comment about me. He said I was age fifty and slightly bald. He missed my age by fourteen [fol. 1270] years, and whether or not I am slightly bald, I will let you be the judge of that. Frankly, I think he's drastically wrong in both of them.

He has got a right to make whatever comment he wants, but in journalism the law assumes that mistakes can be made. You can't check out every—you can't check out every incident before you publish an article. A man didn't come to me and ask me what my age was. I don't guess he would have had time to write his article in the paper if he checked every detail in the article, because he covered a wide area of subjects.

But, be that as it may, there is very little I can say about that. I want to talk to you a minute about these notes. May I have them just a second?

The Clerk: Yes, sir.

Mr. Cody: We are getting down to the Bryant affair now. These notes are made by an amateur, not a football coach. A lot of them don't make any sense. It is written down in pencil on notepaper, taken during the course of the telephone conversation; several are almost illegible, but there is a lot in these notes, and before I touch on what is in these notes that apply to this case, I want to mention this to you.

There are two other things that Mr. Schroder would like to forget about, because in his questioning of these witnesses that he had, they said that these notes weren't any good and one said you might as well tear them up. He [fol. 1271] didn't give those witnesses the benefit before they testified of the detailed deposition that was given by this man Burnett long prior to this trial in which he explained a great many things about that telephone conversation that are not mentioned in these notes. He amplified these notes and explained some things about it.

Mr. Schroder: If the Court please, I don't remember Mr. Burnett testifying in any deposition in this case. There wasn't read any deposition of Mr. Burnett. I think that is highly improper.

Mr. Cody: He examined—

The Court: Just a moment. What is your—

Mr. Cody: He examined him about some depositions.

Mr. Schroder: Mr. Cody—

The Court: Yes, sir.

Mr. Schroder: —is attempting to state to this jury—

The Court: You quote—I don't think—

[fol. 1272] Mr. Cody: I won't quote the deposition.

The Court: I don't think anything that was said in the deposition which was not read would be admissible.

Mr. Cody: Very well, Your Honor; very well.

And then we come, as I consider it, to the most important feature of this case, and that is that on the last page of these notes is the extension number of "Bear" Bryant at the University of Alabama switchboard. Extension 641. Anybody could obtain that, I guess. You could have called up down there and found out that extension number. I don't deny that, if a man wanted to falsify these notes.

He put down the time as 10:40 a.m. on September 13, 1963. That, too, could have been falsified, because anybody can write that time and the date down, but here is something that no man could put down and be accurate unless he had some sort of a psychic power.

It says here "Give Wally a ring Sunday." Now, this was on September 13, a Thursday. Sunday was the 16th, and not until recently has any confirmation been made of that Sunday telephone call, and bear in mind, Gentlemen, this call from "Bear" Bryant to Wally Butts on the quiet of a Sunday afternoon, and the telephone records show that the call went to Wally Butts' home, lasted an hour and seven minutes, and nobody, to this day, knows what the subject matter of that conversation was. Neither Wally Butts nor [fol. 1273] "Bear" Bryant remember making the call, nor do they remember the subject matter about which they talked. That is one of the most incredible things about this case.

There is only one class, only one type of person on earth that could talk an hour and seven minutes and not remember making the call or not remember what they talked about, and that exception is, in my judgment, a teen-ager. A teen-ager can turn the radio on and listen to Ricky Nelson, and at the same time turn the T.V. on to listen to

"Bonanza" or "Dr. Kildare" and spread out on the floor like syrup, and grab that telephone and talk for an hour and seven minutes without knowing what they are talking about or who they called. But, I dare say, that even a few of those would remember something about the call.

But in this particular case, two men who were talking football, let's say it is just general football talk, talking that length of time before this upcoming Georgia-Alabama game, I say to you in all sincerity that to be unable to remember the call or the subject matter is one of the most unbelievable things that I can imagine. I don't intend to comment on that any more. I simply say that there is not the slightest bit of evidence, not the slightest bit of doubt that that call ever took place and the length of it, and if, at the conclusion of this case, you as a matter of fact find that call didn't take place, you want to find a verdict for this plaintiff.

But you will have with you in the jury room a toll ticket of the American Telephone and Telegraph Company or Southern Bell Telephone and Telegraph Company. Here they are. You can look at them. And that company has a [fol. 1274] machine—this is not a human error on anybody's part; this company has a machine that, the minute a call is through, that machine stamps the time of that call, because all along, since the connection was made and since the party started talking, that machine was recording the time, and it is on the back of this toll ticket, and there could be no possible human error about it.

The same applies to the call of September 13, which Butts made to Bryant.

I only have a few more minutes this morning. I want to mention something before I close, and I may have something to say Monday on the same subject.

The subject of any legal investigation is to ascertain the truth, and if you can ever find out what is the truth in this case, your decision, of course, will be easy. This has been a long case. You have been patient, and in your effort to strive to obtain the truth you necessarily will have to judge

the credibility of witnesses. The Court will give you some instruction about that, because there are some Code Sections in Georgia, and this case is governed by Georgia law, even though we are trying it in the Federal court. You are the judges of the credibility of the witnesses.

Now, I want to mention, first, this fellow Carmichael. He started out in this case by undertaking to convince you he was a real estate man and an insurance man. The truth about it, he is neither one. He changed his testimony—and this is under oath to you—he changed his testimony three [fol. 1275] or four times before he ever got to you. He testified one time in a public hearing that was had involving this matter, he testified another time on deposition which I questioned him about, and then he testified a third time in connection with another case, not this one, and something was asked him about this same transaction, and if I recall the testimony correctly, every one of them was different, and then when he got before you he changed his testimony three times. You remember he was here one day and his testimony was along certain lines, and he came back the next morning and said that his testimony the previous day was in error, and he made two or three changes in it, such changes as might suit his convenience.

Now, you can judge the credibility of that type of a witness, not me to judge but you. I simply point it out for what it might be worth, because I may be just a little bit more experienced in the handling of a witness than you might be, because I submit to you that a man that will do that is not worthy of belief in any respect.

And let me touch on "Bear" Bryant just a minute. "Bear" Bryant was charged with the same responsibility as Wally Butts with the training of young people, and he brought two of the finest looking boys into this courtroom that I ever saw in my life. You may not remember them by name, but I do. Sharp is one and Pell is another, Jimmy Sharp and Charles Pell. Jimmy Sharp was a tackle on the 1962 football team and was captain of that team. Charles Pell was the guard. Never in my life have I seen two finer

looking young men, both by appearance and physically, and they made such good witnesses that even Judge Morgan was [fol. 1276] prompted to ask Sharp something along this line—I don't remember the exact transcript of the record; it will be in the record; you may remember it better than I do; I had my mind on other things. The Judge asked him if he intended to study to be a coach, something along that line. I don't remember his exact answer; all I know was that it left me with the conclusion that he might, or something of that sort, and it comes out, and this evidence is in the case, that those two men are on the coaching staff at the University of Alabama and recognized as such. They are assistant coaches, and I say to you that that type of exception, don't blame these young men; they are under the influence of "Bear" Bryant, and if "Bear" Bryant asked them to come up here and condone the fact that they were assistant coaches, I guess they'd do it, because somehow or another a coach has got an influence over a young man that no other person has, not even his parents, and that is the tragedy of this whole situation.

I believe in deception on the football field, but deception in the courtroom is another thing, and I dare say that if those two boys had stated in open Court they were assistant coaches at the University of Alabama, I would have asked them some more questions. I don't recall that I cross-examined either one.

I forgot to mention one thing about this fellow Carmichael. There is another fellow that has been a friend of Butts for fifteen years. He denied it was any close friendship, tried to pretend it was an acquaintance; I guess that's right. But somewhere in the examinations of that witness [fol. 1277] he said he went to his dentist that morning, and after he left there he came on to this office where he ran into Burnett. And I asked this dentist to come to Court, bring his records. He said he hadn't seen him in a long time up until October 4th. That is, in essence, what the records show. I could be wrong. If I am, you can criticize me for it. I can't remember every detail in this case, but,

as I recall, he said October the 4th was the first date that his records showed the man had been there in a long time, but we were talking about September the 13th. That is the important date in this case.

When you are talking about the credibility of witnesses, you have under consideration probably the most important phase of the trial of any legal case. Some witnesses hide facts, and when you find one doing that, you ought to accept his testimony with suspicion.

Let me give you an illustration. We took the deposition of this man Scooby in Chicago, and we undertook to find out something about his acquaintances, and we wanted to find out who this man was that was handling all these bets. If I knew his name and address, I might have been able to give you some more information about this case. All I learned was his name was "Lefty." Well, there are a lot of people named Lefty and a lot of people left-handed, including Dr. Rose. Lefty doesn't mean anything to me nor to you. He didn't know his last name, where he lived. All he knows, Lefty was the one that picked up this money when he lost and brought the money there when he won.

[fol. 1278] Let me tell you this. You have got some very credible witnesses in this case, and they didn't tell you all they know. They have saved all of us a lot of embarrassment in this case, including Coach Butts, and rightly so, and I am delighted that they did, and I have been a party to it, but if Dr. O. C. Aderhold, president of the University, if Mr. J. D. Bolton, who has been there nearly forty years, if Harold Heckman, who has been there thirty-something years and is now head of the Accounting Department and teaches business accounting and business administration at the University, if Dr. Hugh Mills, who is head of the Department of Education, I don't know what that encompasses, I think that is general academic subjects, if Mr. Driftmier, who is head of the Agricultural Department—and, incidentally, outside of two other schools in the United States, I believe the University of Georgia has one of the largest agricultural departments in the world; they have got

a terrific agriculture department down there; if those type men and the men such as Bill Bradshaw, who studied football under Coach Butts and who now represents the alumni of the University, if those sort of men are lying to you, if you think that, then I think you ought to find a verdict for the plaintiff in this case, because our case depends upon people of that character and that responsibility.

It is not up to me to tell you to believe them. If you have the slightest doubt about their honesty or their integrity or the correctness of their evidence, then we have not carried the preponderance of the burden of this proof which is placed upon us, and you ought to find a verdict for the Plaintiff. But I don't believe, and I say this as my time ends—

[fol. 1279] I have a minute, don't I, Judge?

The Court: Yes, sir.

Mr. Cody: I don't believe that those men, charged with the education and the training of your children and mine and the training of children who are hereafter to come, would come into this Federal Court in the presence of a jury and Judge Morgan and the assembled audience, and say what they did, and if what they have said is false and is of no effect, there is no person in this courtroom that is more disappointed than I, and there is no person in this courtroom, in that event, that would worry more about the future of our State.

What little I have to say left I will say Monday. I will try to formulate what few remarks I am to say with a little more definiteness and probably in briefer form, because I will have a little more time to think about it. But, in the meantime, I thank you for your patience which you have shown in this case, and I hope that over the weekend that you will give serious consideration to such comments as I have made, and if I have made any exaggeration or any misstatement in my recollection of what the evidence is in this case, I hope you will forgive me.